

12-338-cv

United States Court of Appeals for the Second Circuit

PREDRAG CICVARA,

Plaintiff-Appellant,

– v. –

PROCTOR & GAMBLE CO., DURACELL,
LYNNE BURNETT,

Defendants,

– and –

GILLETTE CO., PROCTOR & GAMBLE CO., INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX Volume III of III (Pages A-583 to A-846)

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1 Q. Did you welcome it?

2 A. I didn't do anything. I didn't welcome. I
3 didn't unwelcome. Just I accepted it. I didn't act upon
4 it, if you mean that. I didn't try to do anything more
5 because she did that. I was actually -- I was feeling
6 very strange when she put her hand on my thigh, I did,
7 but I didn't say anything because it was inside the car
8 and somehow I felt if I say something it will be very bad
9 to put her in such position, so I just kept my mouth
10 closed.

11 Q. When you claim she touched your thigh, did she
12 rub your thigh or just put her hand on your thigh?

13 A. She did put her hand and she didn't just keep
14 her hand, so it was a pressure, so.

15 Q. But did she move it back and forth or she just
16 put it on and squeeze, what do you remember?

17 A. I can't -- I wouldn't -- I don't know, I can't
18 say that, you know, for sure, but it was there and it was
19 there for more than just touching.

20 Q. How long was it there, two seconds, three
21 seconds?

22 A. No. It was more than that. She was
23 actually -- oh, that was when she was asking me about
24 Austin, Austin Lin. That was actually -- when she put
25 her hand on my thigh she said you don't like Austin, do

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1 you, and I said no, no, why would you say that, and she
2 said, well, he told me something about you, and then I
3 said, you know, we had this -- by the way, we had not
4 just one discussion about his expense report, that was
5 when he cheated. He also wanted immediately after that
6 to go in Florida to some seminar and wanted us to pay for
7 his weekend in hotel, which I told him, look, Austin, you
8 maybe did this when you had Harley as a boss, just please
9 don't do it anymore, you can't do it, you can stay in
10 hotel paid by your own. So he didn't like that either.

11 Q. Let's get back to Bel for a minute. When you
12 claim in the car she put her hand on your thigh and there
13 were other people in the car you said, she mentioned
14 whether you liked Andrew in front of --

15 A. If I liked Austin.

16 Q. Not Andrew, I'm sorry, Austin in front of other
17 people?

18 A. In front of Willies, yes. W-i-l-l-i-e-s, if
19 I'm not mistaken again. I have his card. And in front
20 of Dave Arnsperger, who was official QA auditor there in
21 Indonesia.

22 Q. For Procter & Gamble?

23 A. Yes. He was in Indonesia, then he stayed in
24 Singapore, and then Lori came to Bangkok, she was auditor
25 in Bangkok and in China after that.

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1 Q. Let me ask you something about the time you
2 said that you were in her room on June 8th, 2009. Was
3 that the only time that you went into her room anywhere?

4 A. No. There was a time before that I went once
5 in Indonesia.

6 Q. And how long did you stay that time?

7 A. I don't know. 15 minutes maybe.

8 Q. Did you ever hug her during that time in
9 Indonesia?

10 A. No. No, I didn't hug her. We were sitting
11 together on the sofa, but I didn't hug her, and as I said
12 I think she leaned on me again. That was the time when
13 she told me that she was very unhappy with her marriage,
14 that her boss actually forced her to marry her husband,
15 that she has a relationship with the older gentleman,
16 which I suspect was her boss but she never told me that
17 so I cannot claim that, but from whatever she was talking
18 about it might have been her boss.

19 She was very -- in very unusual relationship
20 with Andrew. She asked me to tell good things to Andrew
21 during the dinner on the 7th in Bangkok, when we came to
22 Bangkok, because she wanted more money from him. So she
23 was very manipulative as well, which I did actually, I
24 did tell him, look, she's very valuable to your team,
25 because I think she is actually, she's very good in what

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1 she's doing, more than good, and she's doing things that
2 you wouldn't expect from normal employee, like, you know,
3 trying to get certain type of control over certain people
4 that she's communicating with, like Austin, like Dave
5 Mathieu who was the designer of the new flashlights, like
6 Al Peterson.

7 She asked me straightforwardly during the
8 dinner in December 2008 in Hong Kong, do you want me to
9 find you a girl so that you can go to karaoke, which I
10 said very straightforward, no, I don't want you, and she
11 said, well, you know, there are certain people in
12 Duracell who are doing that every time they come, and she
13 mentioned Al Peterson. I hope this is not going to kill
14 him, but she did say that.

15 So, you know, there is -- and then, you know,
16 she obviously tried to do similar thing to me, to have a
17 control, certain type of control over people which they
18 can exercise when they need to, which they did in my
19 case, they exercised the control over the people. They
20 didn't like me in the position that I had. And Austin
21 had that position before me, he was the guy who went
22 initially as I said to China to do the initial inspection
23 before the official one of five companies --

24 Q. Okay. You're now spinning off on a tangent.

25 A. I'm just trying to explain certain things,

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1 because Austin was the guy who went to human resources to
2 tell them, Austin Lin was the guy who told human
3 resources that I have improper things with Bel Liu. How
4 would he know?

5 Q. Do you know whether or not Bel ever told him?

6 A. I don't know. But that is answering your
7 question. There is no business relationship supposed to
8 be between Bel Liu and Austin Lin from April 2008,
9 nothing, nothing.

10 Q. But you already answered you have no idea if
11 she called him up to tell him that?

12 A. Obviously she did, and I asked for records,
13 which were denied, you know, e-mail, telephone records
14 between Bel and Austin, that was never provided to me.

15 Q. Okay. Do you claim -- you understand that Bel
16 has -- had told the company that you made unwanted sexual
17 advances towards her?

18 A. No.

19 Q. You never knew that?

20 A. No. I knew what she said in her statement.

21 Q. Okay. Okay. Then listen to my question, okay?

22 A. Yeah. I knew --

23 Q. You understand and you know what her
24 allegations are, that you made unwanted sexual advances
25 and you engaged in other conduct towards her; you know

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1 that she's claiming that, right? I'm just asking you.

2 A. Yeah. She said that on Wednesday, June 10th.

3 Before that certain things happened, before she said

4 that. And she apologized to me on Tuesday, she

5 apologized to me on Tuesday night, she said I did

6 terrible thing to you, and I asked what did you do, she

7 said I can't tell you, you will see one day.

8 Q. Can you go back to please listen to my

9 question?

10 A. Yes. I want this to be put down.

11 Q. But you know what --

12 A. This is not my --

13 Q. I ask the questions, you answer, okay?

14 A. Yeah. Well, I think it's --

15 Q. You understand what it is that she claims

16 happened, which is you touched her inappropriately, you

17 kissed her inappropriately; do you understand that she

18 said that?

19 A. I understand that she said that, yes.

20 Q. That's all I'm asking.

21 A. Yes, yes, yes, I understand what she said.

22 Q. Okay. Do you claim that she made that up in

23 order for you to get fired?

24 A. She made up certain things that she said, yes.

25 I'm not saying she did that in order to get me fired,

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1 because she apologized to me, she apologized to me twice,
2 once on Tuesday night and once on Wednesday morning, and
3 she apologized profusely, she said I'm so sorry that this
4 is happening to you but it was out of my control, that's
5 exactly what she said, she said out of my control. Now
6 you think --

7 Q. Did you ask her what she meant?

8 A. Yes. And she said I can't tell you, you will
9 see, I can't tell you. Apologized to me. Why would
10 somebody that I harassed apologize to me?

11 Q. There's no question.

12 A. She had all the time in the world --

13 Q. There's no question, Mr. Cicvara.

14 A. Okay. I understand.

15 MR. CERASIA: Mark that as 5 please.

16 (Cicvara Exhibit 5: Email - marked for
17 identification.)

18 Q. Showing you what's been marked as Exhibit 5, if
19 you look down at the bottom, first of all it's a document
20 bearing number PG 470?

21 A. Uh-huh.

22 Q. Under the section marked SMS, the text, you see
23 it down at the bottom?

24 A. Yeah.

25 Q. Was (203)243-C079 either your cell phone or

1 BlackBerry number?

2 A. BlackBerry number.

3 Q. Okay. And did you send this text message or
4 SMS to Bel?

5 A. Yes.

6 Q. Was this the day after you were in her hotel
7 room June 8th?

8 A. Yes, it was.

9 Q. When you say -- I think there's a typo there,
10 it says I hope you will, it says b-e-w, but I assume it's
11 to be be, be better soon, what was wrong with her?

12 A. I don't know. She was -- we were told that she
13 is not there the second day on audit. I don't know what
14 was wrong. She said she's -- the guy said she's sick.

15 Q. Who told you that?

16 A. After Yuen told Predrag I was -- let me just
17 take a look, because I don't want to guess. I think this
18 gentleman, Yuen Yau.

19 Q. Y-u-e-n?

20 A. Y-u-e-n, and last name Y-a-u. He told us that,
21 because he picked me and Lori at hotel that morning and
22 he said she's going to be out for today because she's
23 sick.

24 Q. And then you say to her in this text feel
25 terrible that can't be with you and pamper you?

1 A. Yes, I did say that.

2 Q. How were you going to pamper her?

3 A. Just to make her feel good. I don't think --

4 Q. Rub her feet?

5 A. -- there was anything special in the word
6 pamper. Maybe I used the wrong word. Just -- you know,
7 just to make her feel good. I still didn't understand
8 what I understood after the next message, which was, hey,
9 we are not a couple so why are you saying this, and I
10 just couldn't understand that coldness coming out of her
11 at that moment. I was really shocked with that.

12 MR. CERASIA: Mark that as 6 please.

13 Q. All right, Mr. Cicvara, why don't you give me
14 number 5, if you can give me that back, please.

15 A. Sure. I think you have to put --

16 Q. Yeah, you've got to wait. You took it from
17 her. Give it back.

18 A. Sorry.

19 (Cicvara Exhibit 6: PG000471 - marked for
20 identification.)

21 Q. Showing you what's been marked as Cicvara
22 Exhibit 6, which is another text message, it's PG 471.
23 If you look at the bottom, is that the reply you received
24 from Bel?

25 A. Yes.

1 Q. And that's the reply to Exhibit 5; right?

2 A. Yes.

3 Q. Okay.

4 A. And that was really kind of shocking, the way
5 she wrote it, because first of all I never thought that
6 we are couples and I never thought we are lovers, and
7 when she said please stop thinking about me that was
8 really strange because she actually did everything in her
9 power for me to think about her within six months, you
10 know, from December to June.

11 Q. Right.

12 A. I just couldn't, you know, get rid of her
13 messages, e-mail messages, which I asked for and they
14 were never produced because computer was -- disappeared.

15 Q. So that's the reply. But let me ask you this.
16 Do you have any female friends?

17 A. Do I have any female friends?

18 Q. Yeah.

19 A. I probably do.

20 Q. Any of them who get sick and you write to them
21 that you want to pamper them?

22 A. No. No. No. Sometimes maybe. I don't know.
23 If I'm very close maybe I don't pamper but I would like
24 to help.

25 Q. Right. Pamper suggests that you wanted to be

1 something other than a friend, right?

2 A. I understand and I am saying I might have used
3 the wrong word, and I have to explain one thing. English
4 is not my native language, not that I'm trying to make
5 any excuses, but sometimes I'm going to use the wrong
6 word and I usually am given time to explain because
7 people are used to it.

8 Q. Right. But, frankly, with Bel you had feelings
9 other than just as a friend at that point?

10 A. As I said, yeah, it is possible, yes.

11 Q. Okay. Do you know whether or not she was
12 offended by your conduct on June 8th in her hotel room?

13 A. She never said that, never said that to me, and
14 as I said it was hotel room, she was on the phone with
15 her husband 15 minutes during this less than one hour
16 that I was in the room, she was on the phone with her
17 boss and left a message about certain pricing, and during
18 that I saw the message on her BlackBerry from her boss
19 which was telling, A, you are doing great job, the next
20 thing that we need to do is to find a way to sack the
21 gentleman who is manager of the Zhongshan factory, and
22 then when she saw me seeing that e-mail she said you are
23 seeing too much, you are not supposed to read this. I
24 said, look, it was on your BlackBerry, and BlackBerry
25 don't have Chinese characters, so obviously they have to

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1 send English messages on the BlackBerry, so I saw it,
2 what can I do, and she said you know too much, you are
3 not supposed to read these messages. Obviously they
4 decided to sack the guy who it was --

5 Q. Shock?

6 A. Sack, s-a-c-k. Sack the guy who headed the
7 Zhongshan operation of Practical because it was under his
8 umbrella that they send 46,000 of D flashlights
9 wrongfully. What is really strange is he said to her we
10 have to find a way to sack this guy. Well, I don't know
11 what that tells you about relationship between Andrew and
12 her. It tells me a lot, so.

13 Q. Let me ask you this. Did she talk on the phone
14 or get this BlackBerry message before or after you rubbed
15 her back and her feet?

16 A. For sure she talked to her husband after, and I
17 think she actually used her BlackBerry after I rub her
18 feet, yes, because she said I need to send -- I need to
19 actually tell my boss the pricing for the offer that we
20 are preparing for Duracell. That was the moment that I
21 was under impression she left that on and there was a
22 recording on her boss' answering machine, which I was
23 told by Lynne Burnett at the beginning of the meeting
24 that there was a recording from what was going on in that
25 room and she can play it back to me. I was embarrassed

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1 to hear me, you know, saying things sort of, or, you
2 know, whatever it was in the room, so I said, no, you
3 don't have to play it because I know what happened in
4 that room and I was in that room. She also mentioned,
5 you know, like cameras, but she mentioned specifically
6 there was a recording from her boss' answering machine of
7 what was going on in that room, which came out not to be
8 true as you know. The recording was from Wednesday, June
9 10th, in the morning. There was no ever any recording
10 from that room.

11 MR. CERASIA: Can you mark this as 7.

12 A. So I was lied to.

13 Q. Okay. There's no question.

14 A. Okay. I think it's important. And it's not in
15 the notes.

16 Q. There's no question.

17 A. It's not in the notes, which means the notes
18 are not valid. I never saw the notes too.

19 Q. Mr. Cicvara, there's no question, please.

20 A. Okay. Good. I got this --

21 Q. There's no question.

22 A. I'm saying I shouldn't be reading this.

23 (Cicvara Exhibit 7: PG000472 - marked for
24 identification.)

25 Q. I'm showing you what's been marked as Exhibit

1 7, which is Bates number PG 472. Let me ask you if this
2 is the response to your text message which was Exhibit 6?

3 A. Right. It says Thanks for the good time
4 though, P. It might be. I'm not sure that I ever
5 used --

6 Q. Well, that's your --

7 A. -- P point after I sent a message. I usually
8 use either Predrag or I'm not using anything. So
9 obviously it is, but somehow it doesn't look like I did
10 it. It must have been a new computer --

11 Q. Well, you were doing different things that you
12 had never done before according to you during that time,
13 right, like rubbing the feet --

14 A. Oh, like rubbing another woman's feet, yes, I
15 would agree, yes, I was doing that.

16 Q. All right. I have no other question about
17 Exhibit 7.

18 A. Okay.

19 Q. Give it back.

20 MR. CERASIA: Mark this as 8 please.

21 (Cicvara Exhibit 8: PG000473 - marked for
22 identification.)

23 (Cicvara Exhibit 9: PG000474 - marked for
24 identification.)

25 Q. I'm going to show you what's marked as Exhibit

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1 9, which is Bates number PG 474, it's a text message from
2 you June 10th, 2009 at 11:15. And if you look at Exhibit
3 7, you had sent that at 11:14, right?

4 A. That was June 9 and this is June 10.

5 Q. Oh, it's a whole day difference. Okay. I
6 might have been looking at Exhibit 8. Thank you for
7 correcting me.

8 A. Okay.

9 Q. So on the 10th you write to her, just wanted to
10 tell you that I am, and dot, dot, dot, just wanted to
11 tell you that I am still in a shock and disgusted by
12 myself and my poor judgment of things that were going
13 between us, forgive me if you can, P.

14 A. Yeah.

15 Q. What did you mean by that?

16 A. I was trying to apologize for the thinking that
17 at some point it might be -- instead of friendship our
18 relationship might be a little bit more than that, and I
19 actually found out that it was very unusual that she sent
20 message as she did like we are not couple and we are not
21 this, so I apologized for me ever thinking about -- that
22 there could be something more going on between us than
23 that. That was the reason why I did this.

24 Q. Because you thought that there was more going
25 on between you, right?

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1 A. As I said, I can't deny that it's crossed my
2 mind, yes. I wouldn't deny that. And I also said that
3 one of the things I really did wrong is I did wrong to my
4 wife on whatever I did with this woman. So that -- I
5 feel strongly about that, but I didn't harm the company
6 at all, at all.

7 Q. Then why were you in shock?

8 A. I don't know. It might be a poor choice of
9 words again.

10 Q. You've got a lot of poor choice of words; do
11 you blame that again on your lack of command of the
12 English language?

13 A. No, I don't blame it on lack of command. I
14 blame it maybe on text messaging where you are expected
15 to send answer quickly.

16 Q. Well, did anybody tell you you had a certain
17 amount of time to send her this text message?

18 A. No, nobody told me that. I had all the time in
19 the world to do it, but usually what I did when I
20 answered text message is I answered immediately. You
21 will notice that from the text messages that were
22 exchanged. You have the record.

23 Q. Why were you disgusted with yourself?

24 A. I don't know. I thought that it's not a good
25 thing that you would go over friendship if the other

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1 party doesn't want that and I realized that from her
2 message that was sent to me the day after, which was June
3 9th, so that's why. Nothing that has to do anything with
4 whatever happened on June 8th. As I told you nothing
5 happened there which I should be ashamed of.

6 Q. Okay. Why do you say that you had poor
7 judgment?

8 A. Because I thought that there could be something
9 going on between us and it didn't, so I had poor
10 judgment.

11 Q. And you were disappointed that there weren't --
12 there wasn't more going on between you than friendship?

13 A. I think probably I was, yes, because it was six
14 months of her confining to me and causing some emotional
15 reaction on my part, yes, and I don't think it's
16 inappropriate. It's maybe inappropriate for her to send
17 me that. I don't think it's inappropriate in the sense
18 of me working for P&G. I don't think that there's
19 anything inappropriate about that except maybe I should
20 have stopped that from the beginning but I didn't.

21 Q. Because she was an employee of a contractor,
22 right?

23 A. Not because of that. Because she was an
24 employee of a company, not because of me having any
25 influence over her, because I didn't have that.

1 Q. I'm not asking you about influence.

2 A. Because she was an employee of another company,
3 yes.

4 Q. That P&G had a business relationship with?

5 A. That might be very poor judgment on my part,
6 yes, I would say so, but that's about it.

7 Q. Why did you ask her to forgive you?

8 A. Because I did say that there might be something
9 going on, yeah, and, you know, at some point I did, you
10 know -- I did massage her feet, which at some point she
11 said no and I said okay. So, you know, we ate dessert
12 after that. If I harassed her, that was in the hotel and
13 it was going on for 40 minutes, she could have screamed,
14 she could have called somebody, she could have said to
15 her husband on the phone there is a guy here, in Chinese.
16 She didn't. She could have said to her boss there is
17 something going on. She didn't. She could leave the
18 message. She didn't. We sat down, we ate dessert, and
19 we amicably split. I went to my room. Nothing happened.

20 Q. So you think just because she didn't scream or
21 tell anybody else that you think it was appropriate to do
22 what you did?

23 A. No, no, no, I didn't do anything. I said if I
24 did anything, she had all the means in the world to
25 express that something was wrong and she never did. She

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1 never even told me that she felt bad. She told me don't
2 rub -- don't rub my feet anymore; I stopped.

3 Q. Why don't you look at Exhibit 8, which is a
4 June 10th, 2009 text message from you to Bel 6:27,
5 bearing Bates number PG 473.

6 A. Okay. Yes.

7 Q. Did she --

8 A. That was when she apologized to me.

9 Q. Did you buy her a T-shirt?

10 A. Yes.

11 Q. And she returned it to you?

12 A. She returned it to me after all this happened,
13 yes.

14 Q. Why did you buy her a T-shirt?

15 A. Because she was like, oh, I need to buy this
16 T-shirt, she bought two already, and then, well, I spent
17 already too much for this, oh, should I buy this T-shirt,
18 no, I spent too much already, and she's actually
19 collecting T-shirts from -- what's the name of the store
20 that the stars, the rock stars -- I forgot, it doesn't
21 matter -- Hard Rock Cafe, okay, so she's collecting those
22 shirts and she wanted to buy the shirt but she already
23 bought two, so I said I'll buy it as a present for you.
24 I paid with my personal card and my wife found that, so I
25 had something to explain to my wife about this. But,

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1 yes, I bought her a shirt and she returned -- she put it
2 on the door outside of my room on Wednesday morning. But
3 you wouldn't talk about the other text message that I
4 sent her, which was like why did you apologize to me.

5 Q. I didn't get to there, Mr. Cicvara.

6 A. Okay. Sorry.

7 Q. Remember I ask the questions.

8 A. Sorry, sorry, you ask the questions.

9 Q. And according to her you sent this text message
10 before you saw her returning the shirt. In the first
11 message you send to her, the first line says good
12 morning, still sleeping or don't want to answer after
13 all?

14 A. Because I sent a message before this that she
15 didn't answer it, where it was the same question, what is
16 it that you did that you told me you were so sorry about
17 and that you told me you didn't have a way to influence
18 it? She said that, she said I didn't have a way to
19 influence what happened.

20 Q. But you don't know what -- you don't have --

21 A. Let me see. I actually wrote down what she
22 said. I was left no choice; that's exactly what she
23 said.

24 Q. When did you write that down in front of you,
25 at lunch?

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1 A. In front of me. We talked in the car, and he,
2 my lawyer, asked me exactly please try to recall --

3 MR. SIKORSKY: All right. That's --

4 A. -- what did she say exactly. I was left no
5 choice, that was one sentence. It was out of my control
6 and I really apologize to you, I did terrible thing to
7 you.

8 In the middle of the night I couldn't sleep
9 about thinking what the heck is terrible thing what she
10 did, and I asked once, she didn't answer, then I sent
11 another, and I said are you sleeping, I have a question,
12 why did you say I will understand, why are you sorry,
13 sent to her BlackBerry, okay, and she didn't answer this
14 one either, and then in the morning I found that shirt
15 outside of my room and that is when I went to her room
16 asking her, you know, why did you return this to me, I
17 bought it, it's a present, I bought it for you, keep the
18 present, and she kept it, and that is when I asked again
19 please tell me what did you do, because honestly I felt
20 she maybe said something to my wife, you know, like I had
21 a relationship, because I realized that she is -- I don't
22 even know how to say that, might be a little bit unstable
23 in relationships, so she was quick to make decisions like
24 decision don't come to my room and then five minutes
25 later come to my room, I changed my mind, decisions like

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1 destroying life of other people quickly, you know, so I
2 felt all the time she might call my wife. It never
3 crossed my mind that she would do what she did or Austin
4 did basically, because according to her she said I was
5 left no choice, it means like maybe I didn't think that
6 you deserved that, but Austin did what he did and Andrew
7 told me to follow.

8 Q. You're just guessing now?

9 A. No, no, I'm not guessing.

10 Q. Well, did she ever tell you that?

11 A. No.

12 Q. Okay. So you're guessing?

13 A. Because she told me she can't tell me what she
14 did. That's what she told me. And she told me I really
15 apologize to you.

16 Q. Right, and you're guessing what she meant?

17 A. I am not guessing.

18 Q. Well, she never told you, right?

19 A. I'm not guessing. I saw what e-mail Dina
20 Schmude sent to her where she was saying Austin came to
21 human resources, told us this and that. Hey, who is
22 Austin? Austin is the guy who hates me because I caught
23 him lying on his expense report, guy who hates his future
24 boss because he told me, he told me I can't really use up
25 the company the way I used to, to spend seven months

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1 in -- seven weeks in China to inspect five factories. I
2 spent two weeks in China inspecting five factories
3 together with Lori in December. He spent six weeks, and
4 she told me she actually taught him Mandarin because he
5 speaks only Cantonese and she was his teacher for six
6 weeks in China.

7 Q. So do you think that there was a conspiracy out
8 to get you?

9 A. Yes, I think there was a conspiracy, yes. I
10 think that Austin Lin wanted to retaliate to me, that's
11 one of the reasons why this happened to me. The other
12 is -- there are three reasons, big reasons. The second
13 reason is lack of work for Practical where Andrew found
14 the way to get leverage over Duracell by claiming that I
15 harassed her.

16 Q. Okay. Do you have any personal knowledge that
17 Practical ever got any additional orders --

18 A. No, no.

19 Q. Excuse me.

20 A. I hope they didn't.

21 Q. You've got to let me finish. Do you have any
22 personal knowledge that after Andrew wrote an e-mail
23 telling Erik about your unwanted sexual advances towards
24 Bel that Practical got any future orders or additional
25 orders from Duracell because of that e-mail?

1 A. Okay. Let me just correct you in one thing.

2 You said unwanted sexual advances. I said alleged
3 unwanted sexual advances. Please, that's one thing.

4 Q. That's not what his e-mail says.

5 A. Second, I don't have any knowledge, yes.

6 Q. That's all I want to know.

7 A. And I hope they didn't because they don't
8 deserve it. Their business practices are terrible,
9 dishonest too.

10 Q. Do you know whether or not, sitting here today,
11 Austin Lin ever told anybody in human resources
12 specifically what Bel had alleged?

13 A. They wrote it in the e-mail.

14 Q. I'm asking you if you have personal knowledge.

15 A. No, I didn't hear that, but I saw that written
16 in the e-mail.

17 Q. There are no specifics in the e-mail, it's
18 just --

19 A. Can we go through this?

20 Q. We will at some point.

21 A. Okay. Good.

22 Q. I'm asking you whether you have personal
23 knowledge.

24 A. No problem. And the third --

25 Q. Why don't you answer my question first.

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1 A. You didn't hear the biggest reason why I was
2 fired.

3 Q. Why don't you answer my question.

4 A. Okay, I'll answer it when it comes to it.

5 Q. Do you have any personal knowledge that Austin
6 Lin ever gave any specifics as to what Bel told him
7 happened?

8 A. Nothing except whatever is written in that
9 e-mail, and whatever is written we all know, it's
10 written.

11 Q. Okay. Right. And what is the third reason
12 that you believe --

13 A. Oh, the third reason is retaliation of certain
14 people in Duracell who didn't want me to go on with
15 whatever I found about the diversion of cells, millions
16 and millions of cells.

17 Q. In 2007?

18 A. Yes, that were shipped from U.S.A. to Hong Kong
19 and then on the ship to Latin America -- and then from
20 Hong Kong immediately shipped to Latin America and sold
21 to retailers in Latin America, Venezuela, Argentina and
22 some other states there.

23 Q. The judge already ruled that's not relevant to
24 this case.

25 A. Well, there will be another case I suppose.

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1 You will be a very busy man. And I have enough evidence,
2 so. Because you did say unfounded claims in your
3 response. I would like to see those unfounded claims.

4 MR. CERASIA: Could you mark that as 10,
5 please.

6 A. I apologize if I'm falling into flames
7 sometimes. I will try to get calm. It's just that I
8 want truth to come out, all of it.

9 (Cicvara Exhibit 10: PG000475-476 -
10 marked for identification.)

11 Q. Why don't you take a look at what's been marked
12 as Exhibit 10. It's two pages of e-mail identified as
13 PG 475 to 476. Tell me after you've had a chance to look
14 at this.

15 A. Yes. Okay.

16 Q. Am I correct that the bottom e-mail you wrote
17 an e-mail while you were in the plane or typed the e-mail
18 while you were in the plane?

19 A. I guess.

20 Q. On the way back to the United States?

21 A. No. This was not written on the way back to
22 United States.

23 Q. Where was it written?

24 A. This was written on my way to China.

25 Q. China?

1 A. Yes.

2 Q. From Indonesia or from --

3 A. I was doing a lot of work for company, so in
4 less than two weeks I went to Indonesia, I had two
5 quality assurance inspections there, then I went to
6 Thailand, I had one quality assurance inspection there,
7 then I went to China and I had another quality assurance
8 there, and I returned to United States on Saturday, June
9 13th, very late in the night.

10 Q. So you were on the plane when you typed this?

11 A. Yes, to China.

12 Q. Right. And you didn't see her after you sent
13 this message?

14 A. No.

15 Q. The last time you saw Bel was on June 8th or
16 June 9th?

17 A. No. It was June 10th when I went to her room
18 to return the returned T-shirt and that was when she
19 actually -- when you had those recordings that Lynne
20 Burnett says that there are recordings from the answering
21 machine of her boss, those recordings came out to be from
22 the answering machine of Austin Lin that he -- she called
23 in the morning, I don't know why, to probably record me
24 trying to threaten her, which I never wanted to, I was
25 just asking her what did you do.

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1 Q. Okay. So the simple answer to my question is
2 the last time you saw her was June 10th?

3 A. June 10th in the morning, yes, before I went to
4 the airport to China.

5 Q. In the first line to her it says Hi ma Belle,
6 B-e-l-l-e, Hi, m-a, ma Belle?

7 A. Yes.

8 Q. What did you mean by that?

9 A. It was between me and Bel. It came out to be
10 the way of writing e-mails back and forth. She liked it
11 a lot. Ma Belle means there is a song from Beatles which
12 is Michelle, ma belle, so I told her that and then I used
13 ma Belle as my how are you Bel. So it was just a polite
14 way of addressing her, nothing, between us again.

15 Q. In the last sentence -- line of that first
16 paragraph it talks about your warm feelings about her?

17 A. Yes.

18 Q. And that's what you've already testified to or
19 is there something different?

20 A. No. I had feelings about her, yes, which were
21 pretty normal feelings about a human being.

22 Q. And then it says my desire to protect you and
23 inexplicable closeness that I felt towards you all this
24 time?

25 A. Yes.

1 Q. What's the inexplicable closeness?

2 A. That's -- I don't want to say because you are
3 going to attack me, but that's maybe a way of expressing
4 my thoughts in English, nothing -- it doesn't mean
5 anything special. I felt close to that person, nothing
6 else, because of the --

7 Q. You just said you don't want to say. What is
8 it you don't want to say?

9 A. No, no. I don't want to say -- I don't want to
10 excuse myself because of my English language. So, yes, I
11 felt close to that person and that's why I said that.

12 Q. Okay. What were you protecting her from?

13 A. Oh, from the pain that she had; you know, she
14 was complaining about having broken heart because older
15 gentleman left her while she was married to her husband
16 three months in marriage, which I didn't know at the
17 time. She told me that she's married only in June. I
18 didn't know that she was married. I didn't know she went
19 to Spain with her husband. She never told me that. She
20 said I'm going alone.

21 Q. But you knew she was married when you rubbed
22 her feet?

23 A. Yes, I did. She told me that.

24 Q. Second paragraph, it says, It was you whom I
25 chose to confine my thoughts when I had troubles. Like

1 what?

2 A. That means nothing, I'm really sorry.

3 Q. You just write words you don't mean?

4 A. No, I don't write words that I don't mean.

5 This was -- this e-mail is the worst thing and the worst
6 piece of written material that I ever did. I did it
7 partially because I was still afraid that she might go to
8 my wife and tell her what was going on between me and
9 her, and I actually got the brunt of my wife in spite of
10 her telling me, because I was forced to tell my wife the
11 truth obviously and I did tell my wife the truth. So
12 partially this e-mail was written as trying to appease
13 somebody who is dangerous. So I did actually learn that
14 she can do very bad things and I was trying to protect
15 myself actually. So I was trying to come out as good as
16 possible towards her and I really don't enjoy myself
17 writing these things but I did write them. So this is to
18 the point exactly what I wrote.

19 Q. So you say that what you wrote here is a lie?

20 A. No. It was trying -- I didn't lie. I was
21 trying to appease a woman who was dangerous.

22 Q. Is there anything in here that's not truthful?

23 A. Oh, let me go through it. Maybe there is. If
24 I have to do it under oath I'll try to. So let's go
25 sentence by sentence.

1 This paragraph is true. This is no change
2 today --

3 Q. Okay. The question was whether there's
4 anything untruthful, it's either yes or no.

5 A. No, there is nothing really untruthful here,
6 no.

7 Q. In the last -- third paragraph, the second
8 sentence says I would love nothing more than to take back
9 few emotional outbreaks that I experienced last few days.
10 What emotional outbreaks did you have?

11 A. I don't think I had any outbreaks. I --
12 emotionally probably, I can say that, you know, doing
13 that rubbing of feet and getting close in that way it was
14 not really a good thing to do. So it probably is the
15 only thing I could refer to that was experienced last few
16 days, and also the shock that I had when she sent me that
17 text message where she said we are really not lovers and
18 we are not couple, which meant actually I don't want to
19 go on with this relationship anymore, so it was kind of
20 surprising to me, it was a shock.

21 Q. But what emotional outbreaks did you have?

22 A. Well, maybe when I returned the e-mail, my
23 message I did say, you know, okay, thank you for whatever
24 and ever, yes, we are not, you don't have to state the
25 obvious. It was not really the nice thing to say. So I

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1 had a few things which I could have worded probably
2 better than what I did actually.

3 Q. It then says Had I known that I have risked
4 losing such a precious thing as our friendship, I
5 wouldn't ever have attempted what I so foolishly did.

6 A. Which is --

7 Q. What did you attempt?

8 A. I didn't attempt physically anything, but in my
9 mind there was that thing about possibility that we have
10 more than just friendship, emotional, and I would stop
11 right there.

12 Q. So you didn't really -- when you wrote the word
13 I wouldn't ever have attempted, you're now saying that
14 you never attempted anything?

15 A. No, beyond what I did, I never attempted
16 anything, no.

17 Q. And then it says you were misjudging the nature
18 of our closeness in the last few days.

19 A. Yeah, because I told her there is more than
20 just friendship and then she said very coldly and calmly,
21 no, it's not even friendship. The other reason why this
22 e-mail was written the way it is is I realized that I
23 will have to stay in business relationship and we are
24 coming here to business, so basically in order to try to
25 bridge the misunderstandings between us I did try to say

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1 let's stay in friendship and let's forget what happened.
2 She did say pretty strongly that she didn't want what she
3 did, but she also apologized for what she did twice,
4 which is very important because you wouldn't do it if you
5 were harmed by somebody. She also said in her statement,
6 if I'm not mistaken, we will come to that, but she said
7 that -- she said I never meant any harm, I never did any
8 harm to her, never, and was always very polite, that's
9 what she said.

10 Q. Do you know if she was ever afraid of you?

11 A. No, she never said that, so I wouldn't say that
12 she was -- ever had any reasons to be afraid of me. I
13 never did anything to jeopardize her safety in any way,
14 and as I said it's not in my nature to be forceful with
15 any human being, let alone with a woman. I wouldn't ever
16 do that.

17 Q. The last sentence on the first page says, Maybe
18 the cultural differences that you so graciously tried to
19 point out in one of our conversations did ironically
20 played the part in what transpired lately.

21 A. Yeah.

22 Q. What do you mean by she so graciously tried to
23 point out; did she try to tell you at some other point
24 that you were just friends?

25 A. No. No, no, no, she didn't try to point that

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1 out. I think in one of the conversations she did say
2 that she would do a lot of things for the customers,
3 things that her boss is asking her to do, she would just
4 do it. So I think that she once said that in China when
5 somebody -- somebody is trying to be polite to the point
6 where they wouldn't say no ever, and I think what I meant
7 here is if you said one time you don't want any
8 relationship with me over our friendship I would have
9 accepted that immediately, which I did actually.

10 Q. So you blamed her for not coming out so
11 strongly?

12 A. No, no, I didn't blame her. I didn't blame
13 her. If you read this carefully there is no blame in
14 this. It just said maybe ironically it played a little
15 bit of something. Let me just read it. I said maybe the
16 cultural differences that you so graciously tried to
17 point out in one of our conversations did ironically
18 played the part in what transpired lately. So what I was
19 trying to say is if you ever just said no, I would accept
20 no, and when she said no I accepted no as a word.

21 Q. And at the top of page 2 it says I believe if
22 you had taken a strong stance against my foolish attempts
23 to get more out of our relation stopping it from the very
24 beginning, I would have stopped then and would have still
25 be in that special relation with you that meant so much

1 to me.

2 A. Yeah.

3 Q. You again use the word attempts. What attempts
4 did you make, what foolish attempts did you make to get
5 more out of the relationship other than rubbing her feet
6 and her back?

7 A. Those were the attempts and it probably
8 switched in my mind at some point where I thought that
9 there is possibly more, and I'm not blaming anybody for
10 that, it's me.

11 Q. And then you use some words that are harsh of
12 your conduct, where it says if she wasn't so polite and
13 she wasn't trying to hurt your feelings, you have
14 unconsciously encouraged my, and then you got in brackets
15 macho, possessive, blah, blah, blah, efforts to get
16 more --

17 A. That might be massaging --

18 Q. Excuse me.

19 A. Okay. Sorry.

20 Q. -- to get more than you were ready to give. So
21 you think that, you know, you were being possessive with
22 her?

23 A. No, I don't think I have been possessive with
24 her. I think exactly what I write here.

25 Q. It says she encouraged your macho, possessive,

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1 animouse, stupid efforts.

2 A. Which is massaging her back and getting her to
3 the point where she actually said no, stop this, I don't
4 like this, and then I stopped it, and because of that I
5 think we lost the precious thing, which is friendship,
6 and if she said that before, I would stop.

7 Q. And then you refer to yourself as a foolish
8 dirty old man.

9 A. Oh, there you go. Okay. Foolish dirty old man
10 is something that is again between us, it was just
11 attempt to diffuse the situation to the point where we
12 could laugh it off, and I'll explain why.

13 Q. How long did it take you to think of that
14 answer, since you got fired?

15 A. No, no. I didn't think of the answer. I'm
16 telling the truth. In the plane when we were flying to
17 Singapore she picked up the brochures of Singapore. In
18 the brochure there was a sentence which was saying you
19 can take a tour in the topless bus. I was laughing at
20 topless bus and telling her in the plane, wow, that must
21 be exciting to be in the topless bus. I just said that,
22 didn't mean anything else. I meant what I meant. And
23 she read it and she said, well, you dirty old man. So
24 what she meant by that is I meant topless as a meaning of
25 topless. That became words between us. I didn't think

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1 about that or think that I was fired. It was just a
2 thing that happened on the plane between us and she said
3 to me you dirty old man. That's why I used it here,
4 nothing else.

5 Q. And then in the next -- you skip a paragraph,
6 it says, Again I can only say I am sorry for what I did
7 to you and I know there is no real excuse for it. What
8 is it that you did to her that you have no excuse for?

9 A. You know, when she acted like she acted, when
10 she sent that text message where she said that there is
11 nothing between us, I have to tell you that was really
12 shocking to me, because I just couldn't understand it.
13 You know, she was confining to me things like her husband
14 went to China and had inappropriate relationship with
15 somebody. She hated her husband. She was confining to
16 me things like her boss was forcing her to marry the guy
17 so that he stops rumors about them going together on
18 trips, like if you are married woman that will stop the
19 rumors. That came from her. So she was confining to me
20 these things and then all of a sudden she's telling me
21 stop being close to me. I was not even close to you, you
22 were close to me. It was shocking to me. I just
23 couldn't understand where this is coming from, so.

24 Q. So she's telling you this stuff, but in
25 exchange you're rubbing her feet and her back and you're

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1 saying that she was the one who was inappropriate but you
2 weren't?

3 A. No, I'm not saying it was inappropriate. I
4 said it was very inappropriate with respect to my wife,
5 nothing else. I didn't -- I was never in the position to
6 make any decision about business relationships.

7 Q. I know. You said that about four times now.

8 A. Well, I would like you to understand that.

9 Q. That's what you keep saying. All right. And
10 her response to you was, I'm sorry because I don't love
11 you but I know you love me so. I appreciated you in the
12 past because we were just friend. What I cannot accept
13 is that -- is what you did in the last few days. Without
14 those dirty things, we can be friend.

15 A. You will have to ask her.

16 Q. Well, you then respond to her and you never say
17 I haven't done any dirty things to you?

18 A. No. I just said I can promise that never again
19 I will be a dirty man and I did put this in parentheses
20 because that was meant again to be between me and her and
21 to laugh it off.

22 Q. Oh, it's just a joke then?

23 A. No, it's not just a joke. It's something that
24 happened between me and her and she will understand in
25 what context this was. So it's not just a joke. And if

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1 you want to ask her what she meant by what I did in last
2 few days ask her why did she apologize, ask her why did
3 she do the same thing that she did to me to Al Peterson,
4 tried to do it to Dave Mathieu, did it to Austin Lin,
5 wanted me replaced because she counted Austin who was in
6 charge of flashlights before I came will become in charge
7 of flashlights again. We never talked about what
8 happened on the audit the first day, which actually was
9 the trigger I think for whatever happened from that day
10 on, and actually changed her relationship with me
11 immediately.

12 Q. By the way --

13 A. So we talk about that or not?

14 Q. Just so I'm clear, when you went to her room on
15 June 8th you were the one who first reached out to her to
16 find out if you could bring the special dessert to her
17 room, right?

18 A. Yes. I was, yes, but I didn't come uninvited.

19 Q. I only had one question and you answered it.

20 A. Okay.

21 MR. CERASIA: Why don't we take a break.

22 THE VIDEOGRAPHER: Off the record at 2:27
23 p.m.

24 (Recess: 2:27 to 2:37 p.m.)

25 THE VIDEOGRAPHER: On the record at 2:37

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1 p.m.

2 BY MR. CERASIA:

3 Q. Mr. Cicvara, if an employee of a contractor
4 came to you and told you that she was subjected to
5 unwanted sexual advances or comments by your boss, do you
6 believe that you'd have an obligation under the Worldwide
7 Business Conduct Manual and policy to report that?

8 A. Could you repeat that question.

9 Q. Sure. If an employee of a contractor of
10 Procter & Gamble came to you and said I've been subjected
11 to unwanted sexual advances or comments from your boss,
12 do you believe that you'd have an obligation under the
13 Worldwide Business Conduct Manual or the policies to
14 report that to the company?

15 A. It depends on the situation.

16 Q. What would it depend upon?

17 A. It depends upon is it truth or not.

18 Q. Is it what?

19 A. Is the allegation truth or not.

20 Q. So you think you first have to find out whether
21 or not it's true before you decide whether you have an
22 obligation to report it?

23 A. First of all I think that employee of a
24 contractor of a company that works for Duracell or for me
25 have a right to go directly to human resources and report

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1 their claim directly.

2 Q. Okay. That's not the question I asked.

3 A. And they can also go to director of purchasing
4 if they actually contact that person and tell him about
5 this as well. I don't understand why would somebody who
6 is contractor for Duracell go to a person who reports to
7 me and tell him to tell human resources about what is
8 happening with her.

9 Q. That's not the question I asked you. Why don't
10 you focus on the question I asked you. If you can't
11 answer it tell me.

12 A. I think I do understand what you are asking me,
13 and as I said if you think that that's true, you would
14 probably do it, yes, I would answer that, but I am glad
15 that I had, you know, other things too, that I said other
16 things, because it's important. There is a way of
17 picking up the phone and call directly person you are
18 communicating with business-wise if you are making claim
19 of sexual harassment. You don't afraid to do that. If
20 you are harassed you pick up the phone and call the
21 person.

22 Q. Okay. That's not the question, Mr. Cicvara.

23 A. Good. I know what you asked me and I tried to
24 answer the best possible way I can.

25 MR. CERASIA: Can you mark this please as

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1 I think we're on 11.

2 (Cicvara Exhibit 11: PG000498-501 -
3 marked for identification.)

4 Q. Mr. Cicvara, I'm showing you what's been marked
5 as Exhibit 11, a series of notes identified with numbers
6 PG 498 through 501, and have you seen these before?

7 A. I've seen this on May 28, 2010 --

8 Q. Okay.

9 A. -- when it was provided to us.

10 Q. Okay. The answer would be yes.

11 A. Oh, yes. I believe the answer was yes.

12 Q. I just asked you whether you saw it.

13 A. Yes, I did.

14 Q. And isn't it true that on May 15th, 2009 you
15 met with --

16 MR. SIKORSKY: June 15th. You just said
17 May I think.

18 MR. CERASIA: Oh, then I have the wrong
19 date. Thank you, Igor.

20 A. June.

21 Q. Isn't it true on June 15th, which by the way is
22 my birthday, you'd think I'd remember the date, but June
23 15th, 2009 you met with Lynne Burnett, your boss Kevin
24 Babis, and Peggy Wilczewski?

25 A. Yes, it's true.

1 Q. And it was at that meeting that you were
2 notified that you were going to be terminated; correct?

3 A. Correct.

4 Q. Okay. Do you have any reason to believe that
5 meeting did not start at 9:15 a.m.?

6 A. It's irrelevant. It doesn't matter. It might
7 have been 9:14 or 9:17, it doesn't matter.

8 Q. Did Kevin speak at all during the conversation,
9 during the meeting I mean?

10 A. I don't think he did. I also don't think he
11 did know that it was Austin Lin who reported this.

12 Q. That's not the question.

13 A. It is because he told me --

14 Q. No, no. You've got to just answer my
15 questions, okay?

16 A. Okay, yeah. He didn't know that, by the way.

17 Q. Do you know whether or not Kevin knew what was
18 going to be discussed at this meeting?

19 A. No, I didn't know that. I was not told that he
20 knew or he doesn't know.

21 Q. Do you know who made the decision to terminate
22 your employment?

23 A. I believe that was Lynne Burnett.

24 Q. And on what basis do you have that belief?

25 A. Because she is a HR director.

1 Q. And you believe that just because of her title
2 she's the one who made the decision to terminate your
3 employment?

4 A. I think it's irrelevant because the decision --

5 Q. Well, I don't care what you think is
6 irrelevant.

7 A. -- the decision to terminate my employment was
8 made on the wrong premises.

9 Q. Okay. That's not the question.

10 A. It's irrelevant.

11 Q. Why is it irrelevant?

12 A. There were three people in the meeting. At
13 some point of the meeting I was told that the people --
14 that these three people will go to a separate room and I
15 was to wait for their decision. They went to a separate
16 room. After they came back it was Lynne Burnett who told
17 me exactly this, you are terminated as of this date for a
18 cause. She never said why. In spite of the fact that
19 here it does say for harassment, it never said that. She
20 never said why. She said for the cause. Who did the
21 decision it doesn't matter.

22 Q. So the answer is you don't know who did the
23 decision?

24 A. Is it Kevin Babis or Lynne Burnett, it doesn't
25 matter.

1 Q. You know --

2 A. The decision was wrong.

3 Q. -- there's two things that you should do, A,
4 answer questions, and, B, not make decisions whether
5 something is irrelevant or relevant. So just answer the
6 question. So I assume from your answer, which is
7 evasive, that you do not know who made the decision to
8 terminate your employment?

9 A. Sure I don't know. I know who told me about
10 that.

11 Q. Thank you.

12 A. Lynne Burnett, she told me I was fired for the
13 cause.

14 Q. Okay. You said that. Thank you. Isn't it
15 true that Lynne told you during that meeting that she had
16 documentation of e-mails that you had between you and --
17 or text messages between you and Bel?

18 A. I don't recall she said that. I recall she
19 said there is a recording on her boss' answering machine,
20 and she also said I don't even know was it intentional or
21 not and it didn't matter, but she did say there is a
22 recording on her boss' answering machine of the things
23 that went on in the room, have you been in that room?
24 And I said yes. The moment I said yes, I was fired,
25 regardless of what is written here. So there was intent,

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1 a pre-intent to fire me immediately when I say I was in
2 the room, which I never denied. It was like she expected
3 me to struggle with the fact that I was in the room
4 because I was told there are cameras in hotel which can
5 prove that you went to her room uninvited. This is very
6 important. I'm stressing this. I was told that I came
7 into her room uninvited, almost forcefully came into her
8 room. No, I was not, and I said that.

9 Q. Okay. Mr. Cicvara, do you have any idea or any
10 personal knowledge as to what was considered or discussed
11 in making the decision to terminate your employment?

12 A. No, I don't.

13 Q. Okay.

14 A. I never said -- heard that.

15 Q. It says here when they asked you the question
16 at the bottom of page 1, did you take off your clothes in
17 her hotel room, and you said no?

18 A. No, I didn't.

19 Q. You never took off a shirt, you never took off
20 your socks?

21 A. I took off my shorts, yes, because --

22 Q. Your shorts?

23 A. Yes, because I wouldn't lay on somebody's bed,
24 you know, even, you know, sit on somebody's bed without
25 taking off the stuff that I was out in. So I --

1 Q. So you took your pants off?

2 A. I wouldn't say pants, because I had my shorts,
3 it was 110 degrees.

4 Q. Okay. When you say shorts, you mean like
5 Bermuda shorts kind of shorts or do you mean shorts as
6 in, you know, short term for underwear, what did you take
7 off?

8 A. No, no, no. I took Bermuda shorts, yes. I had
9 underwear on myself, yes.

10 Q. Okay. So you took your shorts off and you only
11 had your underwear on?

12 A. Yes, I did.

13 Q. Did you take your shirt off?

14 A. No, I didn't.

15 Q. So you had a shirt on and your underwear?

16 A. Yes, as far as I -- yes, I think so.

17 Q. Okay. And do you believe that that was
18 appropriate conduct?

19 A. No, I don't believe it was appropriate conduct,
20 but in the circumstances where somebody went directly
21 into the bed and dimmed the lights and I was left
22 basically with no choice but to sit down on her bed, I
23 actually did it just so that I don't, you know, spoil
24 somebody's bed sheets.

25 Q. All right. Was there something that you sat on

1 with your shorts, like you sat in mud or you sat on oil?

2 A. No. I just don't do that.

3 Q. So you took your shorts off and sat on the bed
4 with your underwear to be polite?

5 A. Yes, I did, yes. Yes. Before we go on can I
6 just say something?

7 Q. No. I don't have a question.

8 A. Well, these notes here --

9 Q. I don't have a question.

10 A. There wasn't --

11 Q. I don't have a question.

12 A. Okay.

13 Q. And then they asked you the question did you
14 tell her that you wanted to rape her?

15 A. No, I never said that. I never told her --

16 Q. Did you ever say, look, it was in a hotel and
17 she was dressed in a way, I told her that I had a feeling
18 I would rape her --

19 A. No.

20 Q. -- but never had that in my mind and didn't
21 think she'd think about it seriously?

22 A. No, I never said that. I said I never said I
23 would rape her and that's what I said, and that's why I
24 said these notes don't reflect what was talking about at
25 that meeting, they don't reflect it.

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1 I wanted to say something and you cut me off.
2 There is a question here which says did she invite you to
3 her hotel room? There is no answer here. Why do you
4 think there is no answer here? There is another
5 question, did she ask you to leave and did you refuse to
6 leave? There is no answer. Why do you think there is no
7 answer? Do you think she didn't ask me that? These
8 notes are written --

9 Q. So you think if it said that you got invited
10 there it would be okay because you were in there and you
11 were a polite man and you took off your clothes to your
12 underwear --

13 A. No, no.

14 Q. -- you rubbed her feet and you rubbed her back
15 and that's okay?

16 A. I never said that. I said that I was lied to
17 when she said there is a recording from that room on her
18 boss' answering machine and she even added I don't care
19 was it intentional or not. I was lied to.

20 Q. Okay. Did you --

21 A. I said these notes don't have my answer to did
22 you go to her room, what -- did she invite you to her
23 hotel room. I said yes, she invited me, and she said,
24 no, she said you came uninvited. There is nothing about
25 that here. Why?

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1 Q. Well, you told me that she didn't invite you,
2 you told me that you invited yourself and she said okay
3 after some time?

4 A. No, I didn't invite myself. I asked can I come
5 to your room to have dessert with you? I didn't invite
6 myself. I was told yes, come to my room, I changed my
7 mind, in her text message. You know, she did choose text
8 messages to send to Duracell, but she never sent all text
9 messages, she never sent all her e-mails, and I told you
10 I need those e-mails and I was told computer disappeared,
11 there is no computer, there are no traces of e-mails.

12 Q. Did you ever tell Peggy and Lynne and Kevin
13 that I'm a man and it looks like I could rape you like
14 that --

15 A. No.

16 Q. -- because she had very short shorts on?

17 A. No, I never said I could rape you like that. I
18 said when you do those things with your legs one could
19 rape you, and as I said she said then what is rape, and I
20 said whatever the rape is, and we went on about that
21 academically, nothing else.

22 Q. Did you tell Bel she was showing off?

23 A. No, I never said that to Bel and I never said
24 to these people that she was showing off. I said she was
25 dressed very unusually and I was very surprised with that

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1 when she called me in her room. I never said that.

2 Q. Did you ever tell them that you had a feeling
3 that you had to protect her from harm?

4 A. Look, my English doesn't know for the term put
5 her in harm way. I wouldn't ever say that. So whatever
6 is written here is not true. And I said, since I never
7 saw this before May 28th this could have been written in
8 a totally different way. I don't know how are you going
9 to say that this is piece of evidence. For what? For
10 what somebody wanted to write down here? Ask Kevin Babis
11 did she tell me that she had recordings from her room.
12 Ask Kevin Babis what I answered to the question did she
13 invite you to her hotel room. Why it is not in the
14 notes?

15 Q. Okay.

16 A. Why was not I given these notes when I was
17 fired?

18 Q. You said that. Did you ever tell your wife
19 that you took your pants off in that room?

20 A. What does it have to do with this case?

21 Q. Did you ever tell your wife that you took your
22 pants off in her room?

23 A. I'll answer it when you tell me what does it
24 have to do with this case.

25 Q. You don't ask questions. I ask questions. You

1 answer questions.

2 A. Yes, I did tell my wife. I did tell my wife
3 many, many things about this, many more things about this
4 because she was curious to learn. I did pass through
5 that in the last 18 months, yes.

6 Q. And you think that somebody in your position as
7 the quality manager who is out to audit a contractor that
8 it was appropriate for you to be in the room of a general
9 manager of that contractor, A, with your underwear on
10 and, B, massaging her feet and rubbing her back, do you
11 think that's appropriate?

12 A. I think under the circumstances where she was
13 not any better dressed than I was, even worse, when I
14 undressed myself, it might not be appropriate according
15 to some rules, written rules, but for that circumstances
16 it might be.

17 Q. Did Bel ask you to take your clothes off?

18 A. No.

19 Q. Did she tell you to put your clothes back on?

20 A. As a matter of fact, when she said no she --
21 for some reason after we discussed that thing about rape,
22 she got very mad at me, I don't know why, she went on,
23 she said I have to go to the bathroom and please put your
24 shorts on, I hate your underwear. That's what she said,
25 I hate your underwear. So I said okay and I did put it

1 on. That was when she got very mad and she did tell me
2 to put my shorts on. I did it, yes.

3 Q. And did you have your shorts on --

4 A. And I never said the same thing to her.

5 Q. Did you rub her feet before or after you put
6 your shorts back on?

7 A. Before.

8 Q. So you were in your underwear when you rubbed
9 her feet and her back?

10 A. Yes, but I was also in my underwear when she
11 called her boss and when I saw that e-mail and when she
12 told me, you know, this is not what you should see. I
13 was also in my underwear 15 minutes when she talked to
14 her husband that she didn't mention and after that she
15 got mad at me and I put on -- we went to discuss a few
16 things and then we went to kitchen and we ate our
17 dessert, as I said we listened to the music, and that was
18 it for that night, so.

19 Q. Do you think she provoked you or tricked you
20 into --

21 A. Look, I don't want to think anything, I don't
22 want to assume anything, but I think they have a way of
23 doing business which is dishonest. I think they are
24 actually trying to pinpoint people who are involved. I
25 remember one day she told me something about Nitesh

1 Singh, S-i-n-g-h, she said I don't like him and I don't
2 like the way Duracell is changing their people so quickly
3 because I'm just used to somebody and then there is
4 somebody new, and she didn't like Nitesh because for some
5 reason obviously Nitesh didn't like her and it seems like
6 she was not used to that.

7 Q. Did you think before June 8th when you went in
8 her room and you stripped down to your underwear that she
9 was a dishonest person before then?

10 A. I didn't know many, many things about that
11 woman that I learned after, like, for example, about her
12 attempt to seduce Dave Mathieu, about e-mails from Austin
13 Lin, about relationship from Austin Lin. I had my doubts
14 about that because there were other instances where she
15 was telling me I can call Austin any time in the night,
16 no problems.

17 Q. When did you learn that information, after?

18 A. After what? After I was fired, yeah, I learned
19 this information about that she was trying to seduce Dave
20 Mathieu, and Brian Hesse, H-e-s-s-e, advised him to get
21 out of that possible relationship, so don't continue
22 having anything with that woman.

23 Q. But you never thought it was appropriate to,
24 you know, figure out --

25 A. It was appropriate to do what?

1 Q. Well, if you'd let me finish a question I'd get
2 there.

3 A. Okay.

4 Q. You didn't think it was appropriate then to
5 find out who you were dealing with before you decided to
6 go in her room and strip down to your underwear?

7 A. Well, unfortunately, yes. Unfortunately I
8 didn't know many things. As I told you I didn't know
9 that she was married. She never told me. I didn't know
10 that there was a relationship possible with her boss. I
11 didn't know that she was on that trip in Spain with her
12 husband. I didn't know many things. I learned a lot
13 during that trip. I learned a lot after that trip as
14 well, so. One thing that I can tell you is there was
15 nothing I could have done to, you know, improve their
16 position with Duracell or to decrease their position with
17 Duracell. One thing that might have triggered her
18 behavior is our findings during the quality audit, which
19 since you didn't ask me I never came to discuss that, but
20 if you want we can do that.

21 MR. CERASIA: Can you mark this.

22 A. We found out that they might be --

23 Q. No, no, I don't have any question.

24 A. -- below 50 percent in their score, so I think
25 they were very afraid of it on Monday. On Tuesday we

1 actually did score them to 55 and that was a little bit
2 of this (indicating), a little bit.

3 Q. What does this mean?

4 A. This means that I discussed -- we discussed,
5 Lori discussed with me certain things that we found. We
6 found inappropriate or falsifying documents. They
7 falsified the quality records. They were claiming that
8 the certain machine that they used to manufacture
9 reflectors were in good shape when actually for months
10 one part of that machine was not working. Then they show
11 us the records which were showing that they were working
12 and they actually recorded every day off the instrument
13 that was broken and every day they recorded the right
14 thing. So at some point I think they thought they're
15 going to fail, in their mind --

16 Q. But this was after you were confronted with the
17 allegations?

18 A. No. No. This was on June 8, during the day.
19 June 8 during the night she changed her mind and first
20 said don't come, I'm tired, and I said okay, and then she
21 said come, I'm not tired.

22 Q. Let me ask you this. Your claim that they got
23 scored at 55 percent, when do you claim that was
24 communicated to Practical?

25 A. The day after.

1 Q. The day after what?

2 A. After June 8th. So it was communicated on June
3 9 in the afternoon. That night she apologized to me
4 profoundly. She said I'm so sorry but --

5 Q. I know. You've been over this four times, but
6 you don't know why she apologized, you're just surmising
7 as to why she did.

8 A. Okay.

9 MR. CERASIA: Can you please mark this as
10 12.

11 Q. Can I have that 11 back please?

12 A. Are you finished with this?

13 Q. For now.

14 A. Let me just say something.

15 Q. No. You say nothing. No, you say nothing.

16 A. It says I was violating company PVP and I was
17 engaging in harassing behavior by harassing company
18 supplier. That was never told, never said that to me.
19 She said you're fired because of --

20 Q. Okay. Thanks for letting me know.

21 A. She never said because of what.

22 Q. Okay. There's no question pending.

23 A. I asked in one of my e-mails please let me know
24 why I was fired. The answer was you violated conduct
25 manual, Worldwide Conduct Manual. There was no other

1 answer. At this meeting I was told you are fired for
2 cause, nothing else. That's how I was fired, in ten
3 minutes; nine years of work in ten minutes.

4 Q. That's what happens when you strip to your
5 underwear.

6 A. Sure, yes. Good. And that's why computer
7 disappeared with all the reports about the diversion.

8 Q. I don't know what you're talking about,
9 Mr. Cicvara.

10 A. I know you don't, because the judge says, and
11 you said it was unfounded claim in your answer.

12 Q. Okay. There's no question pending.

13 A. Good.

14 (Cicvara Exhibit 12: PG000525 - marked
15 for identification.)

16 Q. Okay, Mr. Cicvara, I'm showing you what's been
17 marked as Exhibit 12, which is identified as PG 525, it
18 is an e-mail of June 14th, 2009 from Andrew to Nitesh
19 Singh, and you understand that to be Andrew Yau?

20 A. Yes.

21 Q. And when did you first see this, during
22 discovery in the lawsuit?

23 A. May 28th.

24 Q. 2010?

25 A. Yes.

1 Q. Second paragraph says I want to let you know in
2 no uncertain terms that he is no longer welcome in
3 Practical in the future, kindly send someone else for the
4 job next time.

5 A. So? What do you want me to say?

6 Q. I didn't ask a question yet.

7 A. Okay.

8 Q. I'm just pointing you to something, okay?

9 A. Okay.

10 Q. So you got the chairman of Practical Lighting
11 saying that you're not welcome there anymore, right?

12 A. Yeah. That's the same chairman who is sending
13 e-mail messages to Bel saying we need to sack that guy
14 who is reporting to him.

15 Q. Okay. What's that have to do with the price of
16 tea in China?

17 A. Nothing. It has nothing to do with anything.

18 Q. All right. So Procter & Gamble, would you
19 agree that if one of their contractors said that they
20 didn't want you on site because you had been sexually
21 harassing one of its employees, that they should no
22 longer send you there, would you agree with that?

23 A. Sure, as long as the investigation that will
24 prove that there were inappropriate sexual advances is
25 conducted in a proper way and they prove that that is

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1 true, yes, I would strongly agree with that.

2 Q. Okay. Now what happens if by some chance it
3 was investigated and the opposite conclusion was reached,
4 and that being that, you know what, we heard what you
5 said, Mr. Yau, but we've investigated and we don't
6 believe that there's been inappropriate sexual
7 advances --

8 A. And then you would --

9 Q. Can I finish?

10 A. Yes.

11 Q. Do you believe that Procter & Gamble at that
12 point should say to its contractor too bad, we're sending
13 Mr. Cicvara back to you no matter what you say?

14 A. No.

15 Q. You've got to respect the wish of the
16 contractor; right?

17 A. Yeah, I would think that maybe they would
18 change the person, they will send another person, but
19 they will not fire the person, there is no reason to.
20 Why would you fire a person who is not guilty, because
21 somebody says that, is that enough reason?

22 Q. Don't you believe that from Mr. Yau's point of
23 view, if he's the chairman of the company and he's
24 writing this to Nitesh Singh, that, you know, this is
25 something that is viewed as not being helpful to the

1 Practical-Duracell relationship?

2 A. I found this very odd that he is actually
3 sending this e-mail to Nitesh Singh.

4 Q. Why is that?

5 A. Because Nitesh Singh reports to -- I forgot her
6 name, but she reports to Erik Lawson. In normal
7 communication between Andrew and -- would go through Erik
8 Lawson. I believe this was done on purpose so that he
9 has another person in Duracell who knows about alleged
10 sexual harassment so that it's like a stamp on my destiny
11 in Duracell, it's like it's not enough that it's HR, it's
12 not enough that it's Erik Lawson, let's put this guy too
13 in the game. So I found this very odd that Andrew Yau
14 would contact person who is Nitesh Singh. Yes, Nitesh
15 Singh was in charge of flashlights, but Andrew Yau never
16 contacted him before. You can ask --

17 Q. Do you have personal knowledge that he never
18 contacted him before?

19 A. Not for this kind of matters, that's for sure.
20 Because this would be discussed between two persons who
21 are at the same level. Like he did discuss later his
22 business with Duracell, where he send directly to Erik
23 Lawson and he told Erik, look, let's forget about this,
24 let's talk about business, you promised there will be
25 business coming and growing and I didn't see it, so now

1 it's time next time when we see each other let's talk
2 about business. This was just, you know what, let's make
3 sure that this guy will never come here again.

4 Q. That's part of your conspiracy theory, right?

5 A. No. There is no conspiracy theory. That's
6 true. There is no theory here.

7 Q. Okay. Do you know what --

8 A. It's all facts.

9 Q. Do you know what Mr. Singh's title was at P&G?

10 A. A buyer. Mr. Singh's title was a buyer for
11 flashlights and he reported to Christina Dilko and
12 Christina Dilko reported to Erik Lawson. So Christina
13 Dilko was on my level and Nitesh Singh was on Austin's
14 level. What I'm saying is it's not normal that general
15 manager or chairman of the company is going to send this
16 kind of e-mail to Nitesh Singh, and first of all Nitesh
17 is not the one who is actually deciding who is going to
18 be sent, it's my boss, Kevin Babis, not Nitesh. Nitesh
19 has nothing to do with QA.

20 Q. Do you know if Andrew Yau had a relationship
21 with Kevin?

22 A. I don't know.

23 Q. Okay. But he had a relationship with Nitesh
24 Singh, right?

25 A. I don't think he did, a relationship. He just

1 knew him because he was buyer, nothing else.

2 Q. On the day that you were fired do you recall
3 whether or not you called Peggy to ask her about your
4 stock options and your bonus?

5 A. On the date when I was fired. I'm not sure was
6 it on that date or day after. I did call, yes, but I'm
7 not sure was it on that date or day after.

8 Q. And you spoke to Peggy?

9 A. Yes.

10 Q. And she -- do you remember her telling you that
11 you could not exercise your stock options because they
12 were forfeited when you were terminated from the company?

13 A. I remember that she said that, yes.

14 Q. And in response to that did you call somebody
15 else in the stock option administration department?

16 A. No. I called them before. I called them the
17 day before and they told me that I have 30 days to
18 exercise.

19 Q. Do you remember who you spoke with in the stock
20 option administration?

21 A. No.

22 Q. When you called stock option administration to
23 ask questions about your ability to exercise your stock
24 options, did you tell them that you had been terminated
25 for cause?

1 A. Yes.

2 Q. Did you tell them the reasons you had been
3 terminated, what the cause was?

4 A. No, because I didn't know that.

5 Q. Well, you knew the allegations against you were
6 that you had engaged in inappropriate conduct towards
7 Bel, right?

8 A. As I said, until today's date I really don't
9 know why I was fired. I don't know why I was fired. I
10 asked not once, I asked many times and I asked in
11 writing, I said please, because I was advised by my
12 lawyers to ask, and I was always told you were terminated
13 because of violating Worldwide Conduct Manual. Look --

14 Q. So you were told the reason?

15 A. No, I was not told the reason. Because in
16 Worldwide Conduct Manual there are about 20,000 reasons
17 for why you can be fired, and I was asking for a reason,
18 specific reason, not violating conduct, tell me what did
19 I violate. I don't know to this date why I was fired.
20 You are saying alleged harassment. She did write that in
21 the notes, but I was never told that during the meeting.
22 I was only told you are fired for cause, as of this date,
23 that's it.

24 Q. So all you did was you told the person in the
25 stock option administration that you were fired for

1 cause?

2 A. For cause, yes.

3 Q. You didn't give any specific facts, nothing?

4 A. No, I didn't get into specifics because I
5 couldn't even tell specifics, I would be lying.

6 Q. Right. And you didn't know if this was a
7 person who had made decisions under the stock option
8 plan?

9 A. She -- no, the person told me if you are fired
10 for cause, and she didn't tell me that there are
11 specifics, you have 30 days until when you left the
12 company to exercise those stock. That is when I called
13 Peggy -- I think next day I called about that, and then I
14 was told that I was -- it was not a correct answer and
15 they regret that they gave me incorrect answer. Then I
16 called Peggy about what is going on and asked her to
17 explain this to me.

18 Q. Okay.

19 A. And then she -- I was sent, you know, that
20 rules about how you exercise and I was told that because
21 of certain things materially injurious to the company, I
22 cannot exercise. I think that's what came out.

23 MR. CERASIA: Mark that as 13 please.

24 Do you have an exhibit there?

25 THE WITNESS: No. I don't have anything

1 here.

2 MR. CERASIA: Okay.

3 (Cicvara Exhibit 13: PG000506-508 -
4 marked for identification.)

5 MR. CERASIA: If you want to mark that as
6 14 while you're doing that, that would be great too.

7 (Cicvara Exhibit 14: PG000516-522 -
8 marked for identification.)

9 Q. Okay, Mr. Cicvara, showing you what's been
10 marked as Exhibit 13, which is a letter to you dated June
11 16th, 2009, identified as PG 506 to 507, from Peggy.

12 A. Uh-huh.

13 Q. Tell me after you've had a chance to review
14 that.

15 A. Yeah, okay, I reviewed it. I saw that letter
16 before.

17 Q. And in this letter, if you look, it's the
18 second sentence of paragraph 1, it says as we discussed
19 earlier today your stock options were canceled because
20 your employment was terminated for cause; right, do you
21 see that?

22 A. I would say that's probably not the only
23 reason. It's not enough that it's terminated for cause,
24 there are other reasons here. It's not just terminated
25 for cause you don't have right to options. There must be

1 something else.

2 Q. What do you mean by that?

3 A. I mean that there should be either A, B or C
4 involved.

5 Q. Well, the definition of discharge for cause
6 includes A, B or C?

7 A. Yes.

8 Q. Right, that's what the plan says?

9 A. Exactly, yes. The definition of discharge for
10 cause includes each of the following, yes, which is A, B
11 or C, yes.

12 Q. Did you understand that that came directly from
13 the stock option plan?

14 A. Yeah, I understood.

15 MR. CERASIA: Can you mark that as 15
16 please.

17 A. Just tell me which one of A, B and C is
18 applicable to this case.

19 (Cicvara Exhibit 15: PG000184-201 -
20 marked for identification.)

21 Q. If you look at the second page of the letter,
22 Peggy tells you that she apologizes for any confusion
23 that resulted from conflicting information that you
24 received from the administrator in the stock option
25 department, right?

1 A. Yeah, sure.

2 Q. And then she tells you that the plan is clear
3 and that the administrators didn't have access to all of
4 the facts, right?

5 A. Sure.

6 Q. And then she enclosed a copy of the plan?

7 A. Yes.

8 Q. And I'm showing you what's been marked as
9 Exhibit 15. Is that the copy of the plan that she
10 enclosed?

11 A. Yes.

12 Q. Had you --

13 A. That's the copy, yes.

14 Q. Had you seen that plan before?

15 A. Well, I'd probably seen it. I didn't go
16 through it before this happened, but after this happened,
17 yes, I did.

18 Q. Part of your compensation over prior years was
19 you received stock options that vested?

20 A. 2001, 2002, '3, '4 and '5, yes.

21 Q. And those vested after three years --

22 A. Yes.

23 Q. -- from the granting?

24 A. So all of them were vested, yes. I could have
25 exercised them in 2006, but I didn't, or any year after

1 that.

2 Q. Well, the last award you got was 2005, right?

3 A. Yeah.

4 Q. And it takes three years to vest?

5 A. Yeah. So 2008 I could have done that, but I
6 didn't. But as I said, could you tell me which one of A,
7 B and C is applicable?

8 Q. Let me have the documents back please.

9 A. Sure.

10 Q. Thank you.

11 A. You're welcome.

12 Q. And you also had a question to Peggy with
13 respect to your bonus, right?

14 A. Well, I was told that I will receive my bonus.

15 Q. Who told you that?

16 A. She told me that.

17 Q. Do you know what your bonus -- what amount of
18 bonus you expected to receive?

19 A. That doesn't really matter, is it 3,000, 5,000,
20 10,000, it doesn't matter, it's a bonus.

21 Q. Well, it matters because I'm asking the
22 question.

23 A. I don't -- you know, 8 percent of my salary is
24 a target bonus, but bonus could be --

25 Q. Is discretionary?

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1 A. No. It could be affected by many things. It's
2 not discretionary, it's 8 percent of my salary, but it
3 does include, you know, how P&G performed in that year,
4 how the specific division of P&G performed. There are
5 many things going into the formula. So it could be 8
6 percent, it could be 5 percent, it could be 10 percent.
7 That's why I'm saying it's irrelevant, it's given.

8 Q. I understand. And you claim that there's no
9 discretion in it?

10 A. I claim there is no discretion in it except
11 maybe in the case you are fired, maybe. So I didn't
12 receive bonus, but I was told I will receive bonus, but,
13 hey, it doesn't matter, it really doesn't matter. I was
14 told that I would receive bonus.

15 Q. Look at Exhibit 14, please.

16 A. Yes.

17 Q. This is an e-mail that you sent to Peggy on
18 September 15th, 2009?

19 A. Yes.

20 Q. Where you ask her about the bonus, right?

21 A. Yes. And I said that last time we spoke you
22 have stated that while my options are not going to be
23 valid I will be eligible for bonus and will receive it in
24 September; that's what she said.

25 Q. Okay. And she wrote back to you, per the

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1 attached guidelines, which are attached to the e-mail,
2 you must be an active employee as of June 30th of the
3 fiscal year to get the bonus?

4 A. Perfectly clear.

5 Q. And you were terminated before June 30th of the
6 fiscal year, right?

7 A. As I said perfectly clear.

8 Q. So do you admit that if you were fired that you
9 were not entitled to the bonus because you had not been
10 there on June 30th?

11 A. I don't have to admit anything, it's here, it's
12 written. I just say I was told differently, nothing
13 else, and I was told differently. I have to admit I
14 probably didn't read this document carefully. If I read
15 it, I probably would find the same thing, but as I said I
16 was told by human resources person that I would receive
17 it. I wouldn't otherwise ask.

18 Q. Okay. But let's go back to the question.
19 Wouldn't you agree that under the short term achievement
20 award policy that you do not receive a bonus if you are
21 not employed on June 30th of that year?

22 A. Just a second.

23 Yes, because it says remember you must be an
24 active employee on date of payment -- oh, these are stock
25 options, I'm sorry. But it's probably the same thing,

1 yes, I would agree.

2 Q. Okay. So you agree that you were not entitled
3 to a bonus for that year?

4 A. Sure, if I am fired, no. The question is why
5 I'm fired, but that's beyond the point.

6 Q. But you were fired before June 30th of that
7 year?

8 A. Sure.

9 Q. So you were not an active employee; correct?

10 A. True. All I'm saying is I was told
11 differently, nothing else, and obviously anybody can tell
12 you anything, but what is written is true, so yes.

13 Q. Did you ever rely on the statement that you
14 claim Peggy made to you that you would be eligible to
15 receive a bonus in September?

16 A. In what sense? I don't understand.

17 Q. Did you make any decisions based on it, did you
18 spend the money?

19 A. How would I spend the money that I don't have?

20 Q. Okay. According to this e-mail, in June of '09
21 you say she told you you're going to get your bonus and
22 you're going to get it in September?

23 A. Yes.

24 Q. Okay. From June '09 to September '09 did you
25 make any decisions to spend money in reliance on your

1 belief that you were getting a bonus?

2 A. No, I have not made any decisions. I never do
3 that.

4 Q. Okay.

5 A. I spend only money that I have.

6 Q. That you have in your hand?

7 A. Lately I don't have much, but I don't spend
8 money that I don't have, so. I didn't make any decision.
9 But my wife is working two jobs because that's the only
10 way we can pay for mortgage, so.

11 MR. CERASIA: Can you mark that as 16 and
12 17 please.

13 (Cicvara Exhibit 16: PG000509-513 -
14 marked for identification.)

15 (Cicvara Exhibit 17: PG000514-515 -
16 marked for identification.)

17 Q. Did you have a chance to look at these? Oh,
18 sorry. They weren't handed to you.

19 A. They weren't given to me.

20 Q. Because I didn't give them to you, you're
21 right.

22 A. I'm not trying to touch anything before I'm
23 given it.

24 Q. Okay. I'm showing you what's been marked as
25 Exhibit 16 and 17. Exhibit 16 is a letter from you dated

1 July 3 to Procter & Gamble addressed to the stock option
2 administrator and it's stamped as PG 509 through 512, and
3 16 -- or, excuse me, 17 is a July 6th, 2009 letter from
4 Peggy to you.

5 A. Uh-huh.

6 Q. Why did you send the letter of July 3 after
7 receiving Peggy's letter of June 16th telling you that
8 your options had been canceled?

9 A. I sent it just to make sure that I did what I
10 thought I should be doing in the first 30 days after I
11 was fired. So I did send it just to make a trace of
12 documents, if you wish, which is exactly what you are
13 showing me, and I was advised so by my lawyer at that
14 time.

15 Q. That would be Mr. Skiber?

16 A. Yes.

17 Q. You say in the last paragraph, it says I fully
18 intend to exercise the final grant, 1,950 shares granted
19 6/16/2005 should it become economically feasible. Were
20 those options underwater at the time?

21 A. Yes.

22 Q. Okay. And then you receive in response a
23 letter from Peggy, July 6th, 2009, telling you that as
24 she explained to you in her June 16th, 2009 letter your
25 options were canceled pursuant to the terms of the plan

1 because you were terminated for cause, right?

2 A. There was a question I asked that you never
3 answered and I don't think -- I'm not sure if you intend
4 to answer it.

5 Q. I'm not here to answer questions. I think I've
6 told you that a couple times.

7 A. Okay. I was asking A, B or C, but you didn't
8 answer it.

9 Q. Sir, I don't answer questions.

10 A. Because as I said terminated for cause is not
11 enough to stop somebody's options, there should be either
12 A, B or C. I was clearly asking you which one of these
13 three is applicable to my case and I didn't hear an
14 answer. It's the same thing as I asked why I was fired
15 and I never heard an answer.

16 Q. Okay. At any point after July 6th, 2009 after
17 you received the letter from Peggy --

18 A. Yes.

19 Q. -- did you ever submit any letter to Procter &
20 Gamble, to the stock option administration department,
21 appealing the decision?

22 A. No.

23 Q. No?

24 A. No. Why would I appeal the decision?

25 Q. I don't know. You never asked -- you never

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1 submitted anything in writing asking for a reason as to
2 why you weren't given the options or for them to
3 reconsider the decision?

4 A. Come on.

5 Q. I'm just asking whether you did it.

6 A. No, I didn't.

7 Q. Okay. Are you taking notes?

8 A. No.

9 Q. What are you doing?

10 A. I'm just going through the notes that I put
11 here and just putting plus, minus. You have the copy of
12 it.

13 Q. Okay. What are the plus and minuses mean?

14 A. It means like I did say something about this
15 and I should say something about which is minus.

16 Q. Those are your notes that you took and you gave
17 us at the beginning of the deposition?

18 A. Yes.

19 MR. CERASIA: Okay. Will you please mark
20 that as 18 please.

21 A. Is that something I shouldn't be doing or can I
22 do that?

23 Q. I'm just curious as to what notes you're
24 taking, that's all. If you're taking notes at the
25 deposition I have a right to know what notes you're

1 taking.

2 A. Okay. That's good. I'm not taking notes, just
3 signs.

4 (Cicvara Exhibit 18: First Amended
5 Complaint - marked for identification.)

6 Q. Showing you what's been marked as Exhibit 18,
7 which is a copy of the Amended -- First Amended Complaint
8 that was filed by your prior lawyer in this case on
9 January 6, 2010. Have you ever seen this document
10 before?

11 A. Yes.

12 Q. Did you see it before it was filed?

13 A. Oh, I believe I saw, yeah, the draft of it.

14 Q. Do you understand everything in here to be true
15 and accurate?

16 A. I think the question is too broad. If you can
17 ask me specifically.

18 Q. Okay. Is there anything in here that's not
19 true or accurate?

20 A. If you can ask me specifically I will answer
21 specifically. I just don't want to make this statement
22 without looking.

23 Q. You can look at it.

24 A. Okay. So can I look at it, can I take the time
25 and read?

1 Q. Sure.

2 A. Okay.

3 MR. CERASIA: We might as well cut while
4 he's reading the document.

5 THE VIDEOGRAPHER: Off the record at 3:31
6 p.m.

7 (Recess: 3:31 to 3:46 p.m.)

8 THE VIDEOGRAPHER: On the record at 3:46
9 p.m.

10 BY MR. CERASIA:

11 Q. Okay. Mr. Cicvara, I'm looking at the
12 complaint, amended complaint which is Exhibit 18, and the
13 question I had asked you was whether or not there's
14 anything in there that you believe to be -- that is not
15 true or accurate.

16 A. Well, according to my knowledge I don't think
17 there is anything here that is not true.

18 Q. Okay.

19 A. Except maybe legal things about, you know --

20 Q. I'm not asking you about legal things, just
21 really the facts.

22 A. Okay, because I don't want -- yeah, okay.

23 Q. As I understand it, you have essentially four
24 claims here, right? You're seeking your -- the value of
25 stock options?

1 A. Yeah.

2 Q. Right? You were seeking what you call a
3 severance package; correct?

4 A. Yes.

5 Q. And then you said that you were seeking an
6 annual bonus, right?

7 A. Yes.

8 Q. Okay. My question was the annual bonus, were
9 you seeking the annual bonus under the STAR plan?

10 A. Yes.

11 Q. Okay. That we already addressed, right?

12 A. We already addressed the case if you are fired
13 you don't have a right to have bonus, yes. The question
14 is why was I fired.

15 Q. I understand. Is there any other bonus that
16 you are seeking other than the STAR bonus in this
17 lawsuit?

18 A. No. It was about that, yes.

19 Q. Okay. What is the severance package you're
20 referring to; is there any written document relating to
21 this severance package?

22 A. I didn't receive any written document that I
23 recall about severance package, no, but there is a
24 severance package for people who are normally fired. It
25 means normally without cause.

1 Q. Oh, who are fired like in a reduction in force
2 or a layoff you mean?

3 A. Yeah, yeah, yeah.

4 Q. Okay. So that's the kind of severance package
5 you think you're entitled to?

6 A. Yes. And that would be bonus too.

7 Q. Pardon me?

8 A. In that case it would be bonus as well because
9 if I were fired, you know, for no reason, then I'm not
10 sure that the bonus is not applicable, it probably is
11 prorated.

12 Q. Okay. So one of the elements of the severance
13 package would be a bonus and maybe salary or something;
14 is that what you're saying? I'm just trying to
15 understand what you're saying.

16 A. Well, usually when you fire people there is,
17 you know, a document which says if you worked for the
18 company let's say five years, I'm just giving an example,
19 then you have a right to have 26 weeks of pay plus
20 whatever, those kind of documents.

21 Q. Were you ever involved in any situation where
22 any employee who reported to you was laid off?

23 A. No. No.

24 Q. Are you aware of any employee who received
25 severance pay under this formula that you've discussed?

1 A. Yes, many. Many people who were let go after
2 P&G took over --

3 Q. Oh, after the merger?

4 A. -- Duracell or Gillette, they got severance
5 package. Many people who were fired, people who are
6 normally fired they get severance package.

7 Q. When you say normally fired --

8 A. It means like --

9 Q. Without cause?

10 A. Yeah. It means because of restructuring,
11 because of other issues. Well, let's say without the
12 involvement of the employee. It means like company made
13 decision to downsize for whatever reason --

14 Q. Or go out of business?

15 A. -- they usually get severance package. That's
16 the package I'm talking about, yes.

17 Q. Okay. You're not aware of any employee who was
18 terminated for performance-related problems getting a
19 severance package, are you?

20 A. No, I don't. And I was not terminated for that
21 purpose.

22 Q. I understand. I'm just asking you.

23 A. No, I was not terminated for that purpose, so
24 I -- and I am not aware of it, yes, that if you would be
25 terminated because of performance you might not, you

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1 know, be receiving that, I don't know. Maybe that's
2 true, I don't know.

3 Q. Are you aware that your claim against Lynne
4 Burnett was dismissed?

5 A. No, I was not aware of it. Was it dismissed?

6 Q. It was dismissed.

7 A. Okay.

8 Q. In July.

9 A. So it's not on the case anymore?

10 Q. Correct.

11 A. Okay. I was not aware of that. Many things
12 happened between July and now, so, yeah.

13 Q. What do you mean by that?

14 A. Well, what I mean by that is I changed lawyers,
15 we asked for the postponement. That's what I meant.

16 MR. CERASIA: Can you mark this, please,
17 as 19.

18 (Cicvara Exhibit 19: Notes - marked for
19 identification.)

20 Q. Mr. Cicvara, before I show you 19, which is the
21 last exhibit I have today, when you were in Bel's hotel
22 room on June 8th and you say she was speaking with her
23 husband, was she speaking in English or Chinese?

24 A. Chinese.

25 Q. The whole time?

1 A. The whole time.

2 Q. So you don't -- do you speak Chinese?

3 A. No.

4 Q. So you don't know what she said to her husband?

5 A. No. And I'm not even sure that it was her
6 husband. I was told it was her husband.

7 Q. Well, she was speaking to somebody in Chinese?

8 A. Yes. I don't know to whom.

9 Q. And you don't know what she said?

10 A. No.

11 Q. Okay. I'm showing you Exhibit 19, which is one
12 of the documents you gave us at the beginning of the
13 deposition which was in your folder?

14 A. Yeah. You asked for it. I didn't give it to
15 you.

16 Q. What's that?

17 A. You asked for it.

18 Q. I asked for it and you gave it to me. I didn't
19 wrestle you for it or anything like that.

20 A. Yeah, okay, yeah.

21 Q. What language is that written in?

22 A. Croatian. It probably is a mix between
23 Croatian and maybe there are some English words.

24 Q. There's a few English words, maybe people's
25 names and months, but I don't know Croatian.

1 A. It's Croatian language, yeah, and it's slang,
2 it's slang language too.

3 Q. Okay. And when was this written?

4 A. Yesterday.

5 Q. You prepared this yesterday?

6 A. Yes.

7 Q. Why did you prepare this?

8 A. Because I wanted to refresh my memory about the
9 things that I would like to talk and I talked about a few
10 of them and I didn't talk about others. I was not given
11 opportunity to talk.

12 Q. Is there anywhere -- will you please look at
13 your original because I only have this copy here.

14 A. Okay.

15 Q. Is there anything in here that relates to Bel?

16 A. Oh, yeah, there are things that relates to Bel,
17 yes.

18 Q. Where, what page?

19 A. Let me see.

20 Q. And what number?

21 A. Many pages. It's on the page 1 there are
22 things with respect to Bel, on the page 2 there are
23 things that are indirectly related to Bel, and page 3
24 many things related to Bel, and if you want I can go one
25 by one and I can tell you.

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1 Q. When did you write the handwriting on the
2 bottom of page 3, yesterday or today?

3 A. Let me see. On the bottom of page 3 this
4 morning, part of it, and then there is something written
5 here which I don't think you have.

6 Q. And when did you write that?

7 A. I don't think you have this thing which I
8 added --

9 Q. At lunchtime?

10 A. -- a few minutes now.

11 No, no. I just added them a few minutes ago.
12 This thing I wrote this morning (indicating) because you
13 have a copy, so obviously it was written before I came
14 here. And this is the thing I told you that she called
15 her boss and there was a message from her boss where he
16 was talking about how she's doing a nice job and the next
17 task is to find a way to sack the general manager of
18 Zhongshan factory in China, s-a-c-k, to get rid of
19 general manager in China, to find ways to do it, and she
20 said you saw too much, you're not supposed to read this.

21 MR. CERASIA: I don't have any further
22 questions at this point, but I am going to reserve my
23 right to recall him based on this document and the other
24 documents that he gave us, some of which we didn't have.

25 THE WITNESS: Well, you never asked for

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1 this, and you did say that it was unfounded claim by
2 Predrag about diversion that took place, unfounded with
3 such strong evidence that only a blind man wouldn't see
4 it or --

5 MR. CERASIA: Mr. Cicvara.

6 THE WITNESS: -- a man with a very strong
7 power in Duracell would prevent it from being seen.

8 MR. CERASIA: Okay. You need to
9 understand something because you weren't at the hearing
10 in July. In July the judge said that anything that
11 happened back in 2007 or 2005, for that matter, or 2008
12 or 2004 was irrelevant and she was not going to order the
13 production of documents.

14 THE WITNESS: I agree. I agree. Yes.

15 MR. CERASIA: So I don't wear a robe, she
16 does, and that's the decision.

17 THE WITNESS: True. For this case it is
18 irrelevant. It might not be in the future, but that's
19 not --

20 MR. CERASIA: Are you threatening my
21 clients?

22 THE WITNESS: No. Why would I threaten
23 anybody? I mean who am I to threaten to anybody?

24 MR. SIKORSKY: I'm taking the position of
25 counsel, and I'm asking for a stipulation, that the claim

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1 of whistle-blowing which was the subject of the
2 discussion before Judge Hall is not encompassed here and
3 in no way is res judicata for any further proceedings
4 that he may wish to raise. Now, that's the position
5 you're taking and -- taken in the discovery and we're
6 free to proceed in any way that we feel appropriate.

7 MR. CERASIA: I have no idea what that
8 means, Igor.

9 MR. SIKORSKY: Okay. Well, that's too
10 bad, but perhaps we'll have the opportunity to enlighten
11 you on that.

12 Now, I'm going to show you -- are you
13 finished?

14 MR. CERASIA: Well, not today you're not
15 because it has nothing to do with discovery in this case.
16 The judge was very clear on that.

17 MR. SIKORSKY: Well, that will be decided
18 in due course.

19 MR. CERASIA: No. It's already been
20 decided. You weren't part of the case then. The judge
21 already decided the scope of discovery.

22 MR. SIKORSKY: Are you saying I can't ask
23 questions about that?

24 MR. CERASIA: That's correct. The judge
25 said that's not within the scope of discovery.

1 MR. SIKORSKY: Well, that's your
2 position. I've got some questions to ask. Let's go
3 through this.

4 MR. CERASIA: Well, no. Excuse me. You
5 should have read the hearing transcript before you came
6 today.

7 MR. SIKORSKY: I am --

8 MR. CERASIA: Have you read it?

9 MR. SIKORSKY: -- very well aware of his
10 rights, Counsel.

11 CROSS EXAMINATION

12 BY MR. SIKORSKY:

13 Q. I'm going to go through some of the documents
14 that we've already given. I'm going to ask you to go
15 through these one at a time and identify. This, by the
16 way, is not a complete --

17 A. Document, no. This is just a part of it.

18 Q. Well, can you identify what this page -- I'm
19 showing you now a document identified with a docket
20 number 391. Can you identify that?

21 A. Yeah. That's the part of the hearings of
22 relationship between Mani Parmar and Ana Cardinale. The
23 part which is -- Ana Cardinale, Cardinale is the famous
24 actress, C-a-r-d-i-n-a-l-e, and Ana is just A-n-a, and
25 Mani Parmar you already have. There was a relationship

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1 and there was a business side of that relationship that I
2 was very negatively affected with. I only learned when I
3 got the documents --

4 MR. CERASIA: Excuse me. Before you get
5 into the question I'm objecting on the ground that it's
6 beyond the scope of discovery as ruled by the judge on
7 July 20th, 2010, and I suggest you read the transcript.
8 She ruled that any discovery --

9 MR. SIKORSKY: Look, Counsel, I'm
10 entitled to put my exhibits in.

11 MR. CERASIA: Have you read the
12 transcript?

13 MR. SIKORSKY: I'll ask that that be
14 marked.

15 MR. CERASIA: Okay. Well, I'll have a
16 standing objection then because you didn't read the
17 transcript because I don't even know that there is one,
18 so why would you represent that there's -- you read a
19 transcript?

20 MR. SIKORSKY: I said I haven't read it.
21 You asked me had I read one and I said I haven't.

22 MR. CERASIA: You could have ordered one.
23 So then you don't know what her rulings were.

24 MR. SIKORSKY: May that be marked as
25 Plaintiff's Number 1.

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1 MR. CERASIA: And I have an objection to
2 any questions relating to Mr. Parmar or Miss Cardinale.

3 THE WITNESS: Okay.

4 MR. CERASIA: Based on the judge's
5 ruling.

6 MR. SIKORSKY: Let her mark those.

7 (Plaintiff's Exhibit A: PG000391 - marked
8 for identification.)

9 Q. All right. Now I'm showing you a second
10 document. Can you identify that? You don't need to
11 testify except as to my questions. I just want you to
12 identify what that document is.

13 MR. CERASIA: And what document are you
14 showing him?

15 A. First part, important to remember, not
16 disclosed yet. This is what I gave to Mr. --

17 MR. CERASIA: Excuse me. I need to know
18 what you're referring to.

19 MR. SIKORSKY: Well, it's the second in
20 order of what we've already provided you.

21 MR. CERASIA: Well, it's not the order
22 that I had.

23 A. It says first part, important to remember, not
24 disclosed yet.

25 MR. SIKORSKY: It's in the material that

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1 we gave to you in the very beginning of the deposition.

2 A. Three pages or four pages. There are two
3 documents, one is called first part and the other is
4 called facts put in chronological order. So these two
5 documents we can talk about --

6 Q. Separate.

7 A. -- separately.

8 MR. SIKORSKY: Would you mark that.

9 A. The first part is talking about alleged
10 diversion which took place in -- actually took place from
11 2002 until -- to the best of my knowledge until 2008 at
12 least, so six years of diversion going on where the cells
13 that were supposed to be put in the devices of OEM
14 manufacturers --

15 MR. CERASIA: Okay. That's another
16 subject that was ruled on by the judge, so I've got
17 another standing objection to questions relating to that
18 as being outside the scope of discovery as ruled by the
19 judge.

20 MR. SIKORSKY: Can you mark that as
21 Exhibit B.

22 (Plaintiff's Exhibit B: Document entitled
23 First part, Important to remember - marked for
24 identification.)

25 Q. (Hanging.)

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1 A. So this document is just continuation of the
2 other one and it's called Facts put in chronological
3 order, for your reference. This is just going on of the
4 same thing and it gives a whole story about what was
5 really going on and who was involved according to the
6 best of my knowledge and it does have hard evidences for
7 all what is stated here. All these evidences were given
8 to Rob DaPra.

9 MR. SIKORSKY: Can you mark that as
10 Exhibit C.

11 A. R-o-b, D-a and then capital P, but one word,
12 r-a, DaPra. It's spelled as I told you, D small a,
13 capital P, small r-a, and he is Vice President of
14 Business Development.

15 MR. CERASIA: I have the same objection.

16 MR. SIKORSKY: Mark it please.

17 (Plaintiff's Exhibit C: Document entitled
18 Facts put in chronological order - marked for
19 identification.)

20 Q. (Handing.)

21 A. This is an e-mail that Rob DaPra sent to me on
22 January 4th, 2008 where he was --

23 MR. CERASIA: Excuse me. When you say
24 this, you've got to tell me what you're referring to.

25 A. Oh, sorry. It says subject in the e-mail which

1 was sent from Rob DaPra to Predrag Cicvara, it says
2 subject, summary of recent discussions.

3 Q. Does it have a date?

4 A. Yes. Date is January 4th, 2008, and in this --

5 MR. SIKORSKY: No. Just I'll mark it.

6 MR. CERASIA: Same objection.

7 THE WITNESS: Can you just mark it.

8 (Plaintiff's Exhibit D: Email - marked
9 for identification.)

10 Q. (Hanging.)

11 A. This next one is the page PG 486. So this is
12 part of material you gave to us. It says --

13 Q. Well, all right, just the date.

14 MR. CERASIA: Is this Exhibit E now?

15 A. Exhibit E. And the date is Tuesday, June 9,
16 2009. It's sent from Dina Schmude to bell@practical.com
17 and it says that Austin Lin was the guy who came to human
18 resources and reported.

19 (Plaintiff's Exhibit E: Email - marked
20 for identification.)

21 Q. Identify this (hanging).

22 A. This is the e-mail sent by Andrew Yau to Erik
23 Lawson which is telling about how the promises about
24 growing business with Duracell were not followed up, they
25 were working hard but they didn't see many orders coming

1 from Duracell.

2 MR. CERASIA: Is that 480?

3 A. 480 page, yes. That's the telling about they
4 are true -- well, I'll not discuss this. This is just in
5 evidence, nothing else.

6 (Plaintiff's Exhibit F: PG000480 - marked
7 for identification.)

8 MR. SIKORSKY: Objection to this?

9 MR. CERASIA: No. I produced that.

10 Q. You can identify that from the number.

11 A. Yeah. This is PG 415 and 416 pages from the
12 charges for the telephone number 243 -- (203)243-0079,
13 which was my BlackBerry, where you can see that there
14 were five messages exchanged on June 8 starting with 6:57
15 a.m. Pacific Time, which was 8:57 p.m. Thailand time, and
16 going to 7:07 a.m. which is 9:07 p.m. Thailand time.
17 Those five messages were can I come to your room, no you
18 cannot, okay, oh, you can I changed my mind, okay, I'm
19 coming, even though it was I came uninvited to her room
20 according to her and according to Lynne Burnett.

21 (Plaintiff's Exhibit G: PG000415-416 -
22 marked for identification.)

23 Q. (Hanging.)

24 A. There are four pages coming. So the first one
25 is future stock option lost Band 4. It's telling about

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1 future stock options that might have been assigned to me
2 had I stayed in the same position and being promoted to
3 Band 4 after certain time. So this is just an example of
4 the loss in wages, future wages. And there are certain
5 assumptions there which are shown, they are written, so.

6 Q. All right.

7 A. That's the page about stock options.

8 MR. CERASIA: Objection to that as well
9 based on the fact this was never produced to us in
10 discovery.

11 THE WITNESS: You never asked for it.

12 (Plaintiff's Exhibit H: Future stock
13 options - marked for identification.)

14 Q. (Hanging.)

15 A. The next page is calculation of bonuses that I
16 was entitled to in P&G and it was calculated 8 percent
17 for Band 3 and 15 percent for Band 4 with the assumption
18 that I would be Band 4 somewhere in 2013. I already had
19 about 15 years in Band 3, so it would be a good
20 assumption. So that's the page about bonuses.

21 MR. CERASIA: And that was I?

22 MR. SIKORSKY: I.

23 THE WITNESS: That's I.

24 MR. CERASIA: Object to that too

25 including on the grounds it was never produced to us.

1 I'm going to object to that too including on the grounds
2 it was never produced to us.

3 Q. When was this -- when were these, all of this,
4 the statements of losses, when would you have prepared
5 those?

6 A. I believe somewhere in October of this year.

7 Q. Of this year?

8 A. Yes.

9 Q. After the production -- after --

10 A. After, yes, yes.

11 MR. CERASIA: Under the Federal Rules of
12 Civil Procedure there's a continuing obligation to
13 produce documents.

14 MR. SIKORSKY: Thank you, Counselor.

15 (Plaintiff's Exhibit I: Calculation of
16 bonus - marked for identification.)

17 Q. (Hanging.)

18 A. The next one is talking about loss in salaries,
19 the first under assumption that I never found a job and
20 the second under assumption that I will find a job but it
21 does not pay the same that my job was.

22 MR. CERASIA: And this will be J?

23 I'm going to object to this because it's
24 completely irrelevant, you don't have a claim for loss of
25 salary in the case, I don't know what it relates to, plus

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1 it was never produced.

2 THE WITNESS: I believe if you'll look at
3 the number 7 there there is something.

4 (Plaintiff's Exhibit J: Loss of salary -
5 marked for identification.)

6 Q. (Hanging.)

7 A. Oh, the next one is a pension fund that usually
8 in P&G there is a formula of how you calculated pension
9 depending on how long have you been with P&G. It could
10 be anywhere from 5 to 18 percent of your salary. So this
11 is just what I lost just by not being in P&G from the
12 pension fund.

13 MR. CERASIA: This would be K?

14 THE WITNESS: I guess.

15 MR. SIKORSKY: J, K.

16 MR. CERASIA: I'm just going to object to
17 this on the grounds that it's not relevant, there's no
18 claim for lost pension in this case and it wasn't
19 produced to us.

20 (Plaintiff's Exhibit K: Pension fund
21 document - marked for identification.)

22 Q. (Hanging.)

23 A. And this is the page which shows that there was
24 a telephone communication with Spain, me calling Bel's
25 BlackBerry number, where she called me first and asked me

1 to call her back, which happened on January 22nd, 2009.

2 It's page 431.

3 MR. CERASIA: Pardon me, is this L?

4 MR. SIKORSKY: Yes.

5 (Plaintiff's Exhibit L: PG000431 - marked
6 for identification.)

7 Q. Now, just a few questions for you from the
8 direct. Approximately when in time was the decision made
9 to return 46,000 items from Practical Lighting that had
10 been produced by Practical Lighting?

11 A. In May 2009.

12 Q. And did Bel call you concerning that decision?

13 A. Yes.

14 Q. And what did she say?

15 A. She was asking me to try to alleviate that
16 position or to try to help her to go through it without
17 negative consequences for Practical.

18 Q. And what was your response to her?

19 A. Well, my response was that I don't have that
20 kind of decision-making authorities and that I am
21 firmly under the -- my position is firmly that it was
22 mistake, their error and they are responsible for it, so
23 that's my position about this.

24 Q. But did you make any -- what reference did you
25 make, if any, concerning whether you had authority to --

1 A. I told her that --

2 Q. -- reverse that decision?

3 A. Well, I told her that it's out of my scope,
4 that it's not my decision, I can only say, you know, from
5 the quality point of view that the shipment was not good
6 and it was not supposed to be accepted, but it's not my
7 decision to reject that shipment, it was somebody else's.
8 I didn't see the shipment.

9 Q. Did you note -- or what difference in her
10 attitude to you -- towards you did you notice after you
11 stated that you had no authority to --

12 A. I believe that that might have been the start
13 of, you know, changes in the attitude.

14 Q. What was -- can you describe the changes in
15 attitude that followed that?

16 A. Probably it was colder to a point, which might
17 have led to certain other things. It was not as warm as
18 before.

19 Q. Counsel asked you a number of questions about
20 ethics and the ethical standards. What was your -- can
21 you describe what --

22 THE VIDEOGRAPHER: Your microphone.

23 MR. SIKORSKY: Sorry.

24 Q. Can you give us any examples of efforts that
25 you made to protect the interest of Duracell?

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1 A. Yes. I did -- it's ironic that this case is
2 actually about me being good to Duracell and P&G and
3 paying the price for it. It's -- starting with this
4 46,000, going to that discovery on June 8 where I
5 discovered something very wrong with the documentation
6 and it might have played a part in what happened after
7 that. I found in Indonesia that they actually used the
8 same pallets that were not allowed to be used again, and
9 I asked Bel Liu did you actually ship anything with these
10 pallets again, and the answer was no, while actually she
11 knew that they -- in the meantime they shipped a big
12 shipment of flashlights which took about five weeks to
13 come to P&G. That shipment was rejected for the same
14 reason. So they lied to us in order to get better score
15 and they did get a pretty good score in Indonesia. She
16 knew that this was going to be caught as a lie at some
17 point because she knew that there is a risk that the same
18 thing is going to happen. So it was a plain lie to me.

19 There were other instances that like she was
20 asking me to help her that time, I said no. I actually
21 protected Duracell when I caught Austin Lin, just to get
22 whatever he got get back to me. It was always me
23 defending Duracell. Like in that diversion case as well
24 me defending. As a manager of OEM Business Services one
25 of my tasks was to prevent diversion, and then I was

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1 actually scolded because I found diversion and everything
2 was taken from me and I got an e-mail back, it was like,
3 hey, stop doing what you are doing, it's not your job.
4 It was part of my job to prevent this. So by doing that
5 actually it was my opinion that I helped the company and
6 indirectly or directly I actually paid a big price for it
7 down the road, as judge, you know, ruled out.

8 I'm still wondering, I was told that it's going
9 to be processed through P&G channels, was it ever
10 processed, was it ever worked on in the legal channels of
11 P&G or not, because there were so many hard evidences
12 there that it was impossible, impossible not to make the
13 right decision about that, impossible. So every time
14 that I was trying to protect and going according to the
15 rules of conduct manual, every time I paid for it dearly.

16 MR. SIKORSKY: Okay. I'd like to take a
17 five-minute break and see if we're finished with this.

18 MR. CERASIA: Okay.

19 THE VIDEOGRAPHER: Going off the record
20 at 4:25 p.m.

21 (Recess: 4:25 to 4:27 p.m.)

22 THE VIDEOGRAPHER: On the record at 4:27
23 p.m.

24 MR. SIKORSKY: I'm all through. I'm
25 finished.

1 MR. CERASIA: Okay. I have a couple
2 questions.

3 REDIRECT EXAMINATION

4 BY MR. CERASIA:

5 Q. Exhibit B, when did you prepare this?

6 A. Oh, this was not prepared. This was from 2007,
7 original document.

8 Q. You prepared it in 2007?

9 A. This was sent to Rob DaPra in 2007. This is
10 just a copy of the document. He must be in the
11 possession of it or legal in P&G must be in possession of
12 it.

13 Q. How about Exhibit C?

14 A. Same thing.

15 Q. 2007?

16 A. 2007. I have electronic files which are 2007.

17 Q. Okay.

18 A. I didn't touch them. I didn't change them.

19 Q. What do you mean you have electronic files,
20 where?

21 A. On my computer.

22 Q. Your home computer?

23 A. Actually I gave them to my lawyer. It was on
24 (indicating).

25 Q. What else do you have on this -- what, do you

1 have a thumb drive?

2 A. Yeah, I have a thumb drive, yeah.

3 Q. You copied it from P&G?

4 A. No. It was on my hard disk, yes.

5 Q. On your hard disk on your work laptop computer?

6 A. No. On the hard disk of something else. It
7 was actually sent to me. I'm sorry. I'm sorry.

8 Q. Was it sent to you at your address, at your
9 e-mail address at Procter & Gamble?

10 A. No, no, no. No. It was sent at my home
11 address.

12 Q. By whom?

13 A. By a woman who copied files from my hard drive
14 and sent it to me.

15 Q. When?

16 A. I don't know when. Probably in -- I don't
17 know. Somewhere when I was fired.

18 Q. After you were fired?

19 A. Yes.

20 Q. Who was the woman?

21 A. A secretary in P&G.

22 Q. Who is the secretary?

23 A. Kevin Babis' secretary, whoever she is.

24 Q. You called her and asked her for this
25 information?

1 A. I actually asked Kevin Babis for that
2 information, I said there is a file on my disk which is
3 called whatever it is called, and they copied it, they
4 sent it to me, so.

5 Q. This was after you were fired?

6 A. After I was fired, yes.

7 Q. Okay.

8 A. Also it was Kevin Babis who told me about this
9 shipment in July which was rejected from Indonesia from
10 Practical.

11 Q. Exhibit H, when did you produce this?

12 A. I believe in October, to the best of my
13 knowledge.

14 Q. Of 2010?

15 A. Yes.

16 Q. And you prepared it?

17 A. Yes.

18 Q. Okay.

19 A. I prepared it.

20 Q. And how about Exhibit I?

21 A. What is that?

22 Q. (Indicating.)

23 A. Oh, same thing.

24 Q. You prepared it?

25 A. Yes, I prepared it.

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1 Q. In October of 2010?

2 A. Yes.

3 Q. Exhibit J, salary?

4 A. Same thing.

5 Q. October of 2010 prepared by you?

6 A. Same thing, yes.

7 Q. Exhibit K --

8 A. Yes.

9 Q. -- prepared by you in October of 2010?

10 A. Yeah, to the best of my knowledge. It might
11 have been, you know, October 30th, November 1st, I don't
12 really know, it's not that relevant, but I prepared it,
13 yes.

14 MR. CERASIA: I have nothing else at this
15 time.

16 THE VIDEOGRAPHER: Off the record at 4:30
17 p.m.

18 (Deposition adjourned: 4:30 p.m.)

19

20

21

22

23

24

25

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1 I, PREDRAG CICVARA, have read the
2 foregoing transcript of the testimony given at my
3 deposition on December 21, 2010 and it is true and
4 accurate to the best of my knowledge and belief as
5 originally transcribed and/or with the changes as
6 noted on the attached Correction Sheet.

7

8

9

10

PREDRAG CICVARA

11

12

13

SUBSCRIBED AND SWORN TO BEFORE ME, the
14 undersigned authority, on this the _____ day
15 of _____, 2011.

16

17

18

Notary Public

19

20

21

22 My commission Expires: _____

23

24

25

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CICVARA

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NOTE: Cicvara Exhibits retained by Attorney Cerasia.

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E	Email from Dina Schmude, 6/9/09	183
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NOTE: Plaintiff's Exhibits retained by Attorney

Sikorsky.

A-692

**EXHIBIT C TO STATEMENT -
EBT OF PLAINTIFF PREDRAG CICVARA, TAKEN DECEMBER 21, 2010
(REPRODUCED HEREIN AT PP. A-493–A-691)**

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

PREDRAG CICVARA, : **CIVIL ACTION No:3:09-cv-25054(JCH)**
Plaintiff, :

V. :

THE GILLETTE COMPANY and :
PROCTER & GAMBLE COMPANY :
and DURACELL, :
Defendants. : **JANUARY 3, 2011**

MOTION FOR PRODUCTION

Plaintiff herein, pursuant to Federal rules, and the extension of time for Discovery ordered by the court, requests that the defendant produce for inspection and copying, the following: all requests being limited to the period from June 7, 2009 until July 15, 2009 unless specifically another date is requested. The request is as follows:

1. All e-mail messages exchanged in that period between Mark Berjolami and Lynne Burnett, Duncan Adamson, Andrew Yau, Peggy Wilczewski, Kevin Babis and Erik Lawson.
2. All e-mail messages exchanged between Lynne Burnett and Kevin Babis, Erik Lawson, Mark Berjolami, Bel Liu, Andrew Yau, Austin Lin and Peggy Wilczewski.
3. All e-mail exchanges between Peggy Wilczewski and Bel Liu, Austin Lin, Dina Schmude, Nitesh Singh, Kevin Babis, Lynne Burnett, Erik Lawson and Mark Berjolami.
4. Produce the hand-written notes written by Peggy Wilczewski on or about June 15, 2009 at the meeting in which the plaintiff was discharged.

-2-

5. All e-mail messages between Dina Schmude and Bel Liu, Austin Lin, Nitesh Singh, Kevin Babis, Lynne Burnett, Erik Lawson and Mark Berjolami.
6. Expense reports for the China-Korea area for March through May 2009 of Austin Lin.
7. The official Blackberry phone records and bills used by Austin Lin for the period May through July 2009.

Respectfully submitted

By _____
Igor I. Sikorsky, Jr.
P.O. Box 38
Unionville, CT 06085
(860) 675-5313
CT Fed Bar No. 04233

CERTIFICATION

This is to certify that the copy of the foregoing was sent by U.S. Mail to:
Attorney Edward Cerasia, II
Seyfarth Shaw, LLP-NY
620 Eight Avenue
New York, NY 10018

Igor I. Sikorsky, Jr.

02/07/2011 17:41 FAX 1212 218 5270

SEYFARTH SHAW LLP

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

----- X
PREDRAG CICVARA,

Plaintiff,

v.

THE GILLETTE COMPANY and PROCTER &
GAMBLE COMPANY, Inc., DURACELL, AN ENTITY
OF UNKNOWN FORM and LYNNE BURNETT,

Defendants.
----- X

: Civil Action No. 3:09-CV-2054
: (JCH)

: February 7, 2011

**DEFENDANTS' RESPONSES AND OBJECTIONS TO
PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Civil Rules of the Court, defendants The Gillette Company and The Procter & Gamble Company (collectively, "Defendants"),¹ by and through their attorneys, hereby submit these responses and objections to plaintiff Predrag Cicvara's Second Request for Production of Documents,² dated January 3, 2011.

I.

RESERVATION OF RIGHTS

Defendants respond to these document requests subject to the accompanying objections, without waiving and expressly preserving all such objections. Defendants also submit these

¹ On July 20, 2010, this Court granted defendant Lynne Burnett's ("Burnett's") motion to dismiss the tortious interference claim against her. Thus, Burnett is no longer a defendant in this case. In addition, Duracell ceased being a legal entity as of January 1, 1999, and therefore is not a proper defendant in this case.

² Erroneously referred to by plaintiff as a "Motion for Production."

responses subject to, without intending to waive, and expressly preserving: (a) any objections as to privilege or work product and (b) the right to object to other discovery procedures concerning the subject matter of the document requests to which they respond herein. These responses are based on Defendants' present knowledge, information, and belief, and are subject to amendment and supplementation as Defendants acquire additional information or documents and complete their discovery of the facts underlying this case.

II.

GENERAL OBJECTIONS

1. Defendants' objections to the document requests are prescribed by, and they hereby respond in accordance with, the Federal Rules of Civil Procedure and the Local Civil Rules of the Court.
2. Defendants object to the document requests to the extent that they seek information and documents not within Defendants' possession, custody, or control.
3. Defendants object to the document requests to the extent that the documents requested therein are equally accessible to, or in the possession of, Cicvara and/or his counsel.
4. Defendants object to the document requests to the extent that they call for a legal conclusion.
5. Defendants object to the document requests to the extent they seek attorney work product, hearing and/or litigation or preparation materials, identification of documents prepared after the commencement of this litigation, or communications protected by the attorney-client privilege or any other applicable privilege.
6. Defendants object to the document requests to the extent that they seek documents concerning employees who were not, or are not, similarly-situated to plaintiff and, thus, purport to seek documents that are neither relevant to the subject matter of this litigation nor reasonably

calculated to lead to the discovery of admissible evidence. Consequently, Defendants will only produce documents in their possession concerning similarly-situated management level employees who were eligible for stock options under the terms of the Gillette Company 1971 Stock Option Plan during the relevant time period.

7. Defendants object to the documents requests to the extent that they seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

8. Defendants object to the document requests to the extent that they call for disclosure of (i) confidential or proprietary business information and/or (ii) personal information about individuals who are not parties to this action, including present or former employees of Defendants.

9. Defendants object to the document requests to the extent that they are repetitive and call for documents already addressed in Defendants' Responses and Objections to plaintiff's First Request for Documents.

10. Each and every response to a document request is made subject to the foregoing General Objections, regardless of whether a General Objection or specific objection is stated in the response. The explicit reference to a General Objection or the making of a specific objection in response to a particular document request is not intended to constitute a waiver of the General Objections that are not specifically referenced in that response.

III.

**RESPONSES AND SPECIFIC OBJECTIONS
TO CICVARA'S DOCUMENTS REQUESTS**

Document Request No. 1: All e-mail messages exchanged in that period between Mark Berjolami [sic] and Lynne Burnett, Duncan Adamson, Andrew Yau, Peggy Wilczewski, Kevin Babis and Erik Lawson.

Responses to Document Request No. 1:

Defendants object to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and purports to request documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request on the grounds that it requests documents that the Court already ruled as irrelevant during its July 20, 2010 hearing.

Document Request No. 2: All e-mail messages exchanged between Lynne Burnett and Kevin Babis, Erik Lawson, Mark Berjolami [sic], Bel Liu, Andrew Yau, Austin Lin, and Peggy Wilczewski.

Responses to Document Request No. 2:

Defendants object to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and purports to request documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request on the grounds that it requests documents that the Court already ruled as irrelevant during its July 20, 2010 hearing. Subject to, and without waiving, these objections, or the foregoing General Objections, Defendants generally refer plaintiff to the documents bearing Bates stamp numbers PG000477 through PG000479, PG000480 through PG000483, PG000581 through PG000585, PG000598 through PG000612, and PG000626 through PG000634, which were produced in response to plaintiff's

First Request for the Production of Documents, for all relevant e-mail communications involving Burnett.

Document Request No. 3: All e-mail messages exchanged between Peggy Wilczewski and Bel Liu, Austin Lin, Dina Schmude, Nitesh Singh, Kevin Babis, Lynne Burnett, Erik Lawson, and Mark Berjolami [*sic*].

Responses to Document Request No. 3:

Defendants object to this Request on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and purports to request documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request on the grounds that it requests documents that the Court already ruled as irrelevant during its July 20, 2010 hearing. Subject to, and without waiving, these objections, or the foregoing General Objections, Defendants generally refer plaintiff to the documents bearing Bates stamp numbers PG000477 through PG000479, PG000480 through PG000483, and PG000546 through PG000635, which were produced in response to plaintiff's First Request for the Production of Documents, for all relevant e-mail communications involving Peggy Wilczewski.

Document Request No. 4: Produce the hand-written notes written by Peggy Wilczewski on or about June 15, 2009 at the meeting in which the plaintiff was discharged.

Responses to Document Request No. 4:

Defendants object to this Request on the grounds that it is overly broad, vague, and ambiguous. Subject to, and without waiving, these objections, or the foregoing General Objections, Defendants refer plaintiff to the documents bearing Bates stamp numbers PG 000644 through PG 000650.

02/07/2011 10:08 PM 1412 EAS DE/V

SEYFARTH SHAW LLP

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Dated this 7th day of February, 2011, at New York, New York.

SEYFARTH SHAW LLP

By Edward Cerasia II

Edward Cerasia II (ct 13096)

Hema Chatlani (phv 04023)

620 Eighth Avenue, 32nd Floor

New York, New York 10018-1405

(212) 218-5500

Attorneys for Defendants

A-701

05/26/2011 10:41 AM 1612 210 0210

CELESTINE JAW 111

008/020

Case 3:09-cv-02054-JCH Document 83-8 Filed 05/26/11 Page 7 of 21

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing document to be served on counsel of record for plaintiff by facsimile and U.S. first class mail, postage pre-paid, on this 7th day of February 2011 at the following address:

Igor I. Sikorsky, Jr., Esq.
P.O. Box 38
Unionville, CT 06085


Hema Chatlani

Defendants also submit these responses subject to, without intending to waive, and expressly preserving: (a) any objections as to privilege or work product; and (b) the right to object to other discovery procedures concerning the subject matter of the interrogatories to which they respond herein. This response is based on Defendants' present knowledge, information, and belief and is subject to amendment and supplementation as Defendants acquire additional information or documents and completes its discovery of the facts underlying this case.

II.

GENERAL OBJECTIONS

1. Defendants' objections to the interrogatories are prescribed by, and they hereby respond in accordance with, the Federal Rules of Civil Procedure and the Local Civil Rules of the Court.
2. Defendants object to the interrogatories to the extent that they exceed the 25 interrogatories permitted by Rule 33 of the Federal Rules of Civil Procedure.
3. Defendants object to the interrogatories to the extent that they seek information and documents not within their possession, custody, or control.
4. Defendants object to the interrogatories to the extent that the information and documents requested therein are equally accessible to, or in the possession of, plaintiff and/or his counsel.
5. Defendants object to the interrogatories to the extent that they call for a legal conclusion.
6. Defendants object to the interrogatories to the extent they seek attorney work product, hearing and/or litigation preparation materials, identification of documents prepared after the commencement of this litigation, or communications protected by the attorney-client privilege or any other applicable privilege.

02/01/2011 10:49 PAA 1212 218 DZTU

DEYFAKIR SHAW LLP

012/023

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7. Defendants object to the interrogatories to the extent that they are not limited in time. Consequently, Defendants will only provide information covering the time period from June 2005 through November 16, 2009 (collectively, the "relevant time period"), unless otherwise noted.

8. Defendants object to the interrogatories to the extent that they seek information concerning employees who were not, or are not, similarly-situated to plaintiff and, thus, purport to seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Consequently, Defendants will only produce information concerning similarly-situated management level employees who were eligible for stock options under the terms of the Gillette Company 1971 Stock Option Plan during the relevant time period.

9. Defendants object to the interrogatories to the extent that they seek information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

10. Defendants object to the interrogatories to the extent that they call for disclosure of (i) confidential or proprietary business information and/or (ii) personal information about individuals who are not parties to this action, including present or former employees of Defendants.

11. Defendants object to the interrogatories to the extent that they are repetitive and call for information already addressed in Defendants' Answers and Objections to plaintiff's First Request for Interrogatories.

12. Each and every response to an interrogatory is made subject to the foregoing General Objections, regardless of whether a General Objection or specific objection is stated in

02/07/2011 18:29 FAX 1212 218 5270

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013/023

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the response. The explicit reference to a General Objection or the making of a specific objection in response to a particular interrogatory is not intended to constitute a waiver of the General Objections that are not specifically referenced in that response.

**RESPONSES AND OBJECTIONS
TO PLAINTIFF'S INTERROGATORIES**

Interrogatory No. 1: Was any written demand for performance improvement under Section A of the termination of employment provisions of the Gillette Company Stock Option Plan ever served to the plaintiff? If so, produce a copy of said document or documents.

Response to Interrogatory No. 1:

Defendants object to this Interrogatory on the grounds that it is vague and ambiguous, and seeks information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to discovery of admissible evidence. Subject to, and without waiving, these objections or the foregoing General Objections, Defendants state that plaintiff's stock options were forfeited by operation of Section 6(f)(B) of the terms of the Gillette Company 1971 Stock Option (Amended and Restated as of December 13, 2005). Defendants further refer plaintiff to their Response to Interrogatory No. 7 in plaintiff's First Request for Interrogatories.

Interrogatory No. 2: What conduct does the defendant claim was "gross misconduct" which materially and demonstrably was injurious to the company?

Response to Interrogatory No. 2:

Defendants object to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, calls for a legal conclusion, is premature at this stage of the discovery process, and purports to call for information more properly discovered by deposition. Defendants further generally refer plaintiff to his deposition testimony, and to the documents bearing Bates stamp numbers PG000487 through PG000501, PG000564 through PG000592, PG000598 through PG000630, and PG000644 through PG000650.

Interrogatory No. 3: Please list the names and titles of any director, officer, or employee who was denied his stock option between January 1, 2007 and December 31, 2009, given [sic] their name, title and date in which they were notified of any voiding of any stock options.

Response to Interrogatory No. 3:

Defendants object to this Interrogatory on the grounds that it is overly broad, unduly burdensome, vague, ambiguous, and purports to request information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving, these objections or the foregoing General Objections, Defendants further state that no similarly-situated management level employee at the Bethel, Connecticut, office had their stock options forfeited under Section 6(f)(B) of the terms of the Gillette Company 1971 Stock Option (Amended and Restated as of December 13, 2005). Defendants further refer plaintiff to their Response to Interrogatory No. 17 in plaintiff's First Request for Interrogatories.

Interrogatory No. 4: State for the record the exact dates of the last two pages listed in the lawyer-client privilege law [sic] which was filed on July 2010 but request the exact dates when the documents ant [sic] titles for the documents were generated.

Response to Interrogatory No. 4:

Defendants object to this Interrogatory on the grounds that it is unclear, overly broad, vague, ambiguous, and seeks information protected by the attorney-client privilege. Subject to, and without waiving, these objections or the foregoing General Objections, Defendants generally refer plaintiff to the "date" column in its July 12, 2010 privilege log for information regarding the dates of the withheld privileged documents.

02/07/2011 10:46 PM 1218 218 0210

SEYFARTH SHAW LLP

02/07/2011

Case 3:09-cv-02054-JCH Document 83-8 Filed 05/26/11 Page 13 of 21

Dated this 7th day of February, 2011, at New York, New York.

SEYFARTH SHAW LLP

By 

Edward Cerasia II (ct 13096)

Herna Chatlani (phv 04023)

620 Eighth Avenue, 32nd Floor

New York, New York 10018-1405

(212) 218-5500

Attorneys for Defendants

Case 3:09-cv-02054-JCH Document 83-8 Filed 05/26/11 Page 14 of 21

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing document to be served on counsel of record for plaintiff by facsimile and U.S. first class mail, postage pre-paid, on this 7th day of February 2011 at the following address:

Igor I. Sikorsky, Jr., Esq.
P.O. Box 38
Unionville, CT 06085



Hema Chatlani

02/07/2011 18:48 FAX 1212 218 5270

SEYFARTH SEAW LLP

017/023

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6-15-09

Where have you been the last wk with Mr. Belkin.
Indonesia + Thailand w/ her.

Did you see her for mtgs + other things?

mtgs, dinner after dinner

After dinner where?

In the bar.

W. have documented in - hotels have cameras,
emails + phone conversations

I went to her room to discuss things w/ her.
What kinds of things?

Some are a bit personal w/ her + with me.

Did she in the end tell me to be hotel room?

Did she ask you to leave + did you refuse to leave?

Did you touch her in any way?

yes, I was room for her. She confirmed
certain things w/ me that it's rather
not discuss here.

I did not have many business discussion
in the hotel room. She confirmed to me
that she broke w/ somebody in her life.

Did you take off your clothes in the
hotel room? No.

02/07/2011 18:32 FAX 1212 218 5270

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018/023

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Have you sent an email to her
for her to get a duty order?

She was at some pt. misunderstanding
my intentions

Did you tell her that you wanted to
rape her?

Look it was in a hotel & she was dressed in
a way. I told her I had a feeling I
could rape her but I never had that
my mind I didn't think she'd think
about it seriously.

What did you do or say to make her
uncomfortable?

I asked if I could come to her room &
she was dressed in very short shorts.
I saw her & it looks like I could rape
you like that. You are showing off.

I had a feeling of Bill that was very
warm to her as she confirmed certain
things to me. I had the feeling I had
to protect her from the harm. She could be
in harm's way by her boyfriend.

I wanted to help her about what
I came to her room to talk to her.

She said I was a threat to her & I tried to reassure

02/07/2011 18:58 FAX 1212 218 5270

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018/023

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she felt pain. She talked about the
 guy who left.
 I said I would rape you because
 she was showing off.
 She said please can you go & I left the room.
 I didn't want to harm her.

LB: When you were in her hotel room - was she
 afraid of you & she called her brother.
 When she asked me to leave, I left.

Never touched her, never changed her
 never took your clothes off.

Did you ever come to her room
 when she did not want you? NO

Was she rich in bed when you went there?

She never told me she was rich.

Where did this take place?

In Bangkok -
 Emporium Centre

We were in the restaurant of Wky hotel
 (Lanni, PC, Mr. Andrew Bod.)

02/07/2011 19:04 FAX 1212 218 5270

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020/023

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I was stroking her head - tried to
get her head there (pt. to his chest).

After we were denied, I left.

How many nights did you go to her
hotel room? That was the night.

How many days were you together?
Indonesia Singapore (one night)
Wed. 7 8 9 10
(for 6 days)

Did you attend her training? Yes
Did you understand the comp. policy? Yes

Do you realize you were a comp rep &
this is one of our suppliers?
I think what I did was not
unappreciated.

Do you think that this is what your wife would find
appropriate? Probably not.

My wife might think I did something
inappropriate. She would like me to
feel for other women.

02/07/2011 19:10 FAX 1212 218 5270

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021/023

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What do you feel for Rel?

I have very warm feelings for Rel.
I feel she is probably in a hot too
good of a relation with her husband.
She married & didn't feel as if
she was married.

How old is Rel?

30 or there

How old are you? 54

Is she an attractive woman?

She's a good looking woman. I don't know if
she is attractive. This doesn't have anything
to do with attractiveness. This kind of relationship
didn't happen in ?

I'm not saying it's appropriate. She's a small
thing about her. It was more than a normal
relationship that is in a business relationship

RB -> If the under recording that you ^{are} being
asked to leave a room
you didn't, how do you explain that?
I left the room. Why is there a
recording?

02/07/2011 19:17 FAX 1212 218 5270

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022/023

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I left her room w/ out harming her.

She apologized to me + I didn't understand why. She says when she didn't come on 2nd day of arrest, she apologized + said she was sorry for what she did. Now I understand why. Oh my God.

Why did you put her who she had told?
I tried to understand why she was apologizing. I asked her who she told because I couldn't sleep. I even sent her an SMS message asking why she was apologizing. She said you'll understand one day.

Do you realize that law is illegal + the comp. - you can be sued for harassing behavior? I didn't want to harass anybody.

Anything else that you'd like to tell me?

A. Yes. This is a mistake that I'm sorry if I did to harm the company. I did not mean to hurt anybody. She apologized to

me. I feel that to a point I was provoked - I shouldn't be saying this - if I was thinking of showing the way it turned out I should not have been treating her the way... It didn't come from one day. I believe it came close in the sense I was the person she wanted to befriend. It was a work relationship between us. I'm trying to explain why maybe at some pt. it became personal. When she told me to leave her room, I left her room. There was nothing between us.

Violation of P.O.P.

- engaging in bad behavior
- violated camp policy + P.O.P.
- have supplies

Proctor told Cynan that she had destroyed his life.

A-716

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Customer Service Number 1-800-337-8997

Jun 12, 2009

Statement For:
Account Number:
Corporate ID:(203) 243-0079
505334309
PROCTER AND GAMBLE

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ROAMING CHARGES - (Continued)

Date	Call Destination	Time	Number Called	Call Type	Minutes	Airtime Charges	Toll Charges	Total
Thailand (AIS)								
6/09/09	United Sta, NO	9:24 PM	203-638-5877		1	\$ 1.49	\$ -	\$ 1.49
Sub Total					32	\$ 47.88	\$ -	\$ 47.88
SUBTOTAL					149	\$ 564.51	\$ -	\$ 564.51

MESSAGING CHARGES

Date	Service	Time	Destination	Message Type	Messages	Direction	Total
6/19/09	Croatia	8:11 AM	386980501	Text	1	Incoming	\$ 0.20
6/19/09	Croatia	8:12 AM	38589686346	Text	1	Outgoing	\$ 0.20
6/20/09	Bridgeport, CT	7:46 AM	203-521-7560	Text	1	Outgoing	\$ 0.20
6/03/09	Hong Kong	12:38 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/04/09	China	1:04 AM	8613825078827	Roam Text	1	Incoming	\$ 0.20
6/04/09	China	1:41 AM	8613825078827	Roam Text	1	Outgoing	\$ 0.35
6/04/09	China	1:44 AM	8613825078827	Roam Text	1	Incoming	\$ 0.20
6/05/09	India	9:43 AM	919958589850	Roam Text	1	Outgoing	\$ 0.35
6/05/09	India	10:00 AM	919958589850	Roam Text	1	Outgoing	\$ 0.35
6/05/09	Hong Kong	8:15 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/06/09	Hong Kong	8:15 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/06/09	Hong Kong	8:25 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/06/09	Hong Kong	8:25 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/07/09	Cincinnati, OH	1:41 AM	513-237-4011	Roam Text	1	Outgoing	\$ 0.35
6/07/09	Cincinnati, OH	1:41 AM	513-237-4011	Roam Text	1	Outgoing	\$ 0.35
6/07/09	Cincinnati, OH	1:41 AM	513-237-4011	Roam Text	1	Outgoing	\$ 0.35
6/07/09	Cincinnati, OH	5:24 AM	513-237-4011	Roam Text	1	Outgoing	\$ 0.35
6/07/09	Cincinnati, OH	6:50 AM	513-237-4011	Roam Text	1	Incoming	\$ 0.20
6/07/09	Hong Kong	8:11 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/07/09	Hong Kong	8:18 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	3:43 AM	919958589850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	3:43 AM	919958589850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	4:01 AM	919958589850	Roam Text	1	Outgoing	\$ 0.35
1. 6/08/09	Hong Kong	6:57 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
2. 6/08/09	Hong Kong	7:00 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35
3. 6/08/09	Hong Kong	7:05 AM	85296737194	Roam Text	1	Outgoing	\$ 0.35

The date and time for all messages corresponds to Pacific Time (PST/PDT).

Cell Types: (A) Call Waiting (B) Call Forward (C) Conference Call (E) Data/Fax (F) Mobile2Mobile (G) Voicemail (H) Free Calls

(I) Int Disc Call (J) Int Disc Call to Mobile (K) WPS Call (T) T-Mobile Number (U) HotSpot Call (V) myFaves Call (X) T-Mobile @Home Call

Confidential

PG000415

A-717

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Statement For:
Account Number:
Corporate ID :(203) 243-0078
308834409
PROCTER AND GAMBLE

Customer Service Number 1-800-837-8967

Jun 12, 2009

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MESSAGING CHARGES - (Continued)

Date	Service	Time	Destination	Message Type	Messages	Direction	Total
4. 6/08/09	Hong Kong	7:05 AM	85298737194	Roam Text	1	BANGKOK Outgoing	\$ 0.35
5. 6/08/09	Hong Kong	7:07 AM	85298737194	Roam Text	1	BANGKOK Outgoing	\$ 0.35
6/08/09	Hong Kong	2:44 PM	85298737194	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	2:49 PM	85298737194	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	2:56 PM	85298737194	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	3:00 PM	85291057640	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Bridgeport, CT	6:09 PM	203-521-2165	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	7:52 PM	85291057640	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	8:05 PM	85291057640	Roam Text	1	Incoming	\$ 0.20
6/08/09	Hong Kong	8:14 PM	85291057640	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Bridgeport, CT	9:11 PM	203-521-2165	Roam Text	1	Incoming	\$ 0.20
6/08/09	Bridgeport, CT	9:12 PM	203-521-2165	Roam Text	1	Incoming	\$ 0.20
6/08/09	Bridgeport, CT	10:20 PM	203-521-2165	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	10:53 PM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	China	12:20 AM	8612625078827	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	1:41 AM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	1:45 AM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	1:54 AM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	2:16 AM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	2:17 AM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Bridgeport, CT	10:05 AM	203-521-2165	Roam Text	1	Incoming	\$ 0.20
6/08/09	Bridgeport, CT	10:07 AM	203-521-2165	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	1:18 PM	85291057640	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	3:27 PM	85291057640	Roam Text	1	Outgoing	\$ 0.35
6/08/09	India	7:47 PM	919958588850	Roam Text	1	Outgoing	\$ 0.35
6/08/09	Hong Kong	8:15 PM	85291057640	Roam Text	1	Outgoing	\$ 0.35
SUBTOTAL					52		\$ 18.70

The date and time for all messages corresponds to Pacific Time (PST/PDT).

DATA SERVICE CHARGES

Date	Service	Megabytes	Total
5/10/09	RIM BlackBerry	4.9286	\$ -
SUBTOTAL		4.9286	\$ -

Call Type: (A) Call Waiting (B) Call Forward (C) Conference Call (E) Data/Fax (F) Mobile2Mobile (G) Voicemail (H) Free Calls

(I) Int'l Disc Call (J) Int'l Disc Call to Mobile (K) WPS Call (T) T-Mobile Number (U) HotSpot Call (V) myFaves Call (X) T-Mobile @ Home Call

Confidential

PG000416

	A	B	C	D	E	F	G	H	I
1	PART OF EXHIBIT F (Answers to Undspt. Facts) - EXACT EXPLANATION								
2									
3	Messages exchanged on Monday 6/8/2009 from 8:57 PM to 9:07 PM - Thailand (Bangkok) Time Zone per official T-Mobile bill for 203-255-7544								
4									
5	Message #	<u>Time Stamp - USA PST - from P&G phone bill for 203-243-0049</u>	What was stated in the message per Predrag's Deposition Testimony?	<u>Time in Bangkok</u>	Time in Hong Kong	<u>Time that should have been shown on Bel's phone (HK)</u>	NOTES:		
6	1	6:57 AM	Predrag: Can I come to your room to eat dessert with you?	8:57 PM	9:57 PM	10:05 PM	Bel's phone was off by 8 minutes ahead based on Singapore's record that Bel provided and Peggy captured (page 000612) - therefore the times in Column H - should have been times shown on the page 000612 - but they do not match!		
7	2	7:00 AM	Bel: No, I am tired	9:00 PM	10:00 PM	10:08 PM			
8	3	7:05 AM	Predrag: Ok - have a good night sleep then.	9:05 PM	10:05 PM	10:13 PM			
9	4	7:05 AM	Bel: Hey, I changed my mind - you can come!	9:05 PM	10:05 PM	10:13 PM			
10	5	7:07 AM	Predrag: OK - will be there in a minute.	9:07 PM	10:07 PM	10:15 PM			
11									
12	Messages that Bel Liu forwarded to Peggy Wilczewski, supposedly exchanged on 6/8/2009 - provided on the Bates page 000612 - listed chronologically								
13									
14	Message #	<u>This should be (but it is not) recorded on the P&G phone bill for 203-243-0049 - USA PST - if Bel's statement were true (15 hours and 8 minutes subtracted)</u>	This is what Bel claims were the th econtents of the messages exchanged. Notice the sixth message - supposedly sent by Predrag Cicvara at 7:05 AM	<u>Time in Bangkok</u>	Time in Hong Kong	<u>Time and text (column C) that Bel provided to Peggy - time is off Bel's phone - 8 minutes ahead.</u>	NOTES:		
15	1	6:57 AM	Predrag: Hey if you want a company for desert let me know	Not Important	Not Important	10:05 PM	1. There is one more, obviously fabricated e-mail (six versus 5 that really were exchanged).		
16	2	6:57 AM	Bel: I want to take a rest	Not Important	Not Important	10:05 PM			
17	3	6:58 AM	Predrag: Have a good night sleep and sweet dreams	Not Important	Not Important	10:07PM	2. Times on e-mails are not assigned properly. First three e-mails are obviously similar on Bel's statement - which means that she tampered with times - as times should have been as listed in the table above (Column B)		
18	4	7:01 AM	Bel: Sorry! I am not really well tonight. Anyway, Yuan left already.	Not Important	Not Important	10:09 PM			
19	5	7:05 AM	Predrag: I know you are not and just wanted to be with you without dirty thoughts ...so let me know I need few minutes for e-mails and then can bring desert to your room if you want. (this is the message that was never written by Plaintiff)	Not Important	Not Important	10:13 PM	3. E-mail on 10:13 (Bel's phone time) was sent by Bel, not Predrag (see above) - and the text she sent to Peggy, see on the left, is completely fabricated		
20	6	7:07 AM	Predrag: OK just few minutes please.	Not Important	Not Important	10:15 PM	There is no logical sense in what is written in e-mails 4 - 5 and 6		
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35	Note 1: Time on the T-Mobile official bill is Pacific Standard Time in USA. It is 14 hours behind the Bangkok, Thailand time, and 15 hours behind Hong Kong / China time in summer. Bel's phone is on Hong								
36	Also, Bel's phone is 8 minutes ahead of the correct China time.								
37	Note 2: Hong Kong / China time is 1 (one) hour ahead of Bangkok, Thailand time.								
38									
39	Note 3: Why would Predrag write in his last message: OK - just a few minute please - if he sent (according to Bel) the fifth message two minutes earlier? OK - to what?? While it does have sense in the above table, it d								
40	any sense in the Bel's table. WHY? Because the messages in Bel's table are out of sync (and time stamps) they are tampered with, and the fact that she had added a message that did not exist, changed the flow								
41	conversation and made it a completely nonsensical.								

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**EXHIBIT G TO STATEMENT -
MEMORANDUM OF LAW, BY DEFENDANTS PROCTOR & GAMBLE AND LYNNE
BURNETT, IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY,
DATED JULY 7, 2010
(REPRODUCED HEREIN AT PP. A-122-A-141)**

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-----Original Message-----

From: Lawson, Erik
Sent: Thursday, June 25, 2009 08:19
To: Wilczewski, Peggy; Burnett, Lynne
Subject: Fw: Duracell

This should be the last email trail on this topic and Practical would like to close the discussion at this point.

Sent from Blackberry

----- Original Message -----

From: andrew <andrew@ji-net.com>
To: Lawson, Erik
Sent: Thu Jun 25 00:09:35 2009
Subject: Re: Duracell

Dear Erik,

Thanks for the e mail. I just returned from HK and I spent enough time with Bel during this trip. She is handling it fine and definitely she would like, most of all, to forgive and forget about it. In a way, she also feels a bit guilty that Pregard lost his job because of this - and I told her not to feel that way as what happened is in the past and nothing can be done about it. So let's leave it this way - she totally understands and she can handle this.

I'll come to Hong Kong to have dinner with you on July 7. Let's meet at the Peninsula Hotel, the French restaurant - Geddi. It is on the side entrance on the 2nd floor. If you have any problem, please call my HK mobile no. 94900537. Or else, I'll see you there.

There'll be a lot of issues we need to discuss in terms of business. Practical's hope has been on growing our business with Duracell - however, with all the hard work we put in during the last 2/3 years - our order book is not supporting our operation now and in the foreseeable future. This is the most urgent challenge facing Practical at the moment. We are very disappointed with the level of order for the Daylites, as well as other business with your company.

Please be rest assured that Bel is doing fine and she is committed to Practical and will always do her best for both of our companies.

See you soon in Hong Kong and looking forwards to catching up with you.

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Best personal regards

Andrew

----- Original Message -----

From: Lawson, Erik <mailto:lawson.ec@pg.com>
To: Andrew <mailto:andrew@net1.ji-net.com>
Sent: Wednesday, June 24, 2009 12:27 AM
Subject: RE: Duracell

Dear Andrew

Thanks for the reply. I understand this is an uncomfortable situation for Bel. I am simply offering to apologize in person on behalf of P&G as Mr. Cicvara violated one of the most important beliefs of the Procter and Gamble Company - trust. We have great respect for Bel and she has done a terrific job working with Duracell. This incident has been managed very confidentially within P&G and only myself, Human Resources and a few others in executive management are aware of the details. Nitesh and the other people Bel works with are not aware of this situation nor do they know any details. Bel should not feel uncomfortable working with Duracell and we hope she will continue in her position and work with us as we grow our business together. Please make sure she understands this.

I will be in Hong Kong the week of July 6th. I arrive at the Hong Kong airport at 2:00 PM on the 7th and should be at the hotel by 5:00 PM. If you are available, it would be good to meet, if not only for dinner. As we assess the lighting business, there may be more opportunity for Practical. If you're not available, Christina and Mike will likely be in China at the end of July/early August and they will find time to meet with you then. I look forward to hearing from you. Thanks.

Regards,

Erik Lawson

Associate Director

- Procter & Gamble Company

Durables Spend Pool

· Duracell GBU SPOC

203-796-4092

lawson.ec@pg.com

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Text messages forwarded by Bel Liu to Peggy Wilczewski on Friday, June 12 at 6:54 am ET
using Aicent MMS Virtual Delivery

P's msg on 6/6 21:23 in Singapore

Part 1 - Text

Hi Bel Tried to call you few minutes ago -- just to let you know that I would like to bring you your sun protector and the shirt from Hard Rock Café -- did not want to come unannounced to your room, If I said anything that have offended you I am sorry.

P's msg on 6/6 21:32 in Singapore

Part 1 - Text

You are breaking one of the four agreements by making (unwarranted) assumptions about me or my intentions. I am too open and I like way too much to have any hidden ideas. ARE you angry at me???????

P's msg on 6/8 22:05 in Thailand

Part 1 - Text

Hey if you want a company for desert let me know!

B's reply on 6/8/22:05 in Thailand

Part 1 - Text

I want to take a rest.

P's message on 6/8 22:07 in Thailand

Part 1 - Text

Have a good night sleep and sweet dreams.

P's msg on 6/8 22:13 in Thailand

Part 1 - Text

I know you are not and just wanted to be with you without dirty thoughts..... so let me know I need few minutes for emails and then can bring desert to your room if you want.

B's reply on 6/8 22:09 in Thailand

Part 1 - Text

Sorry! I'm not really well tonight. Anyway, Yuen left already.

P's msg on 6/8 22:15 in Thailand

Part 1 - Text

OK just few minutes please

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From: Bel [bell@practical.com.hk]
 Sent: Friday, June 12, 2009 8:18 AM
 To: Wilczewski, Peggy
 Cc: Schmude, Dina
 Subject: RE: For your review

Attachments: Notes from Bel Liu on 6-11-09.doc; Re: Please Read This E-mail; P's msg on 6/9; B's reply on 6/9; P's msg-II on 6/9; P's msg on 6/10; P's msg-II on 6/10



Notes from Bel Liu
 on 6-11-09....



Re: Please Read
 This E-mail



P's msg on 6/9



B's reply on 6/9



P's msg-II on 6/9



P's msg on 6/10



P's msg-II on 6/10

Dear

Peggy,

I forwarded you 8 text messages that I couldn't convert them to email format this morning. Let me know if you didn't receive them. I also attached Predrag's email and the 5 remaining messages as email format.

Besides, I amended the notes and highlighted in blues for my changes. I added on some memories and feelings. Please understand that I tried to be polite when hosting customer.

Andrew's email is andrew@ji-net.com. Let me know what else do you need.

Best regards,

Bel

Practical Group of Companies

Tel: +852 2332 1887

DL: +852 2781 3166

Fax: +852 2770 3754

www.practical.com.hk <<http://www.practical.com.hk/>>

Disclaimer

Information contained in this message is confidential and may be legally privileged. This message is intended solely for addressee(s). If you are not the named addressee, you are hereby notified that any use, dissemination, or reproduction is strictly prohibited and may be unlawful.

From: Wilczewski, Peggy [mailto:wilczewski.p@pg.com]
 Sent: Friday, June 12, 2009 12:54 AM
 To: Bel
 Cc: Schmude, Dina
 Subject: For your review



June 16, 2009

Mr. Predrag Cicvara
2122 North Benson Road
Fairfield, CT 06824

Dear Predrag:

The purpose of this letter is to provide you with additional information regarding the treatment of your Gillette stock options as a result of your recent termination from the Company. As we discussed earlier today, your stock options were cancelled because your employment was terminated for cause.

Section 6(f)(A) of The Gillette Company 1971 Stock Option Plan (the "Gillette Plan") states that "[i]f any employee Participant is discharged for Cause, as hereinafter defined, all his options shall immediately be cancelled effective as of the date of termination of his employment." The Gillette Plan's definition of "discharge for Cause" includes each of the following:

(A) the Participant's continued failure to perform substantially his duties with the Company or any of its subsidiaries (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for performance is delivered to Participant by an officer or a senior manager of the Company or the subsidiary which identifies the manner in which the Board or the elected officer or manager believes that Participant has not performed his duties;

(B) the Participant's engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary; or

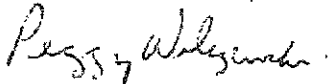
(C) the Participant's conviction of a felony or a plea of nolo contendere by Participant with respect thereto.

I have enclosed a copy of The Gillette Company 1971 Stock Option Plan for your review.

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I apologize again for any confusion that resulted from conflicting information provided by the Company's stock option administrators. However, the Gillette Plan is clear on this point and the administrators did not have access to all of the facts associated with your inquiry. I have also enclosed a copy of the Gillette Plan for your review.

Regards,

A handwritten signature in cursive script, appearing to read "Peggy Wilczewski".

Peggy Wilczewski
Sr. Human Resources Manager

Enclosure

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

PREDRAG CICVARA, : Civil Action No. 3:9-CV-2054 (JCH) (HF)
Plaintiff, :

V. :

THE GILLETTE COMPANY and PROCTER & :
GAMBLE COMPANY and DURACELL, AN ENTITY :
OF UNKNOWN FORM and LYNNE BURNETT. :
Defendants. : May 26, 2011

MEMORANDUM IN OPPOSITION TO GILLETTE'S MOTION
OF SUMMARY JUDGMENT AND IN SUPPORT
OF CICVARA'S CROSS MOTION
ARGUMENT
STANDARD FOR REVIEW

- I. THE STANDARD FOR SUMMARY JUDGMENT HAS REPEATEDLY BEEN SET FORTH; SINCE THE ISSUES IN OPPOSITION TO GILLETTES MOTION ARE MIRROR IMAGES OF PLAINTIFFS MOTION THIS MEMORANDUM IS INTENDED TO SERVE IN OPPOSITION TO GILLETTE'S MOTION AND IN SUPPORT OF CICVARA'S CROSS MOTION.

The Court reviews a Motion requesting Summary Judgment asks whether the record demonstrates that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 300 (2nd Cir. 2003). In determining where there are genuine issues of material fact, the Court is "required to resolve all ambiguities and draw all factual inferences in favor of the party against whom summary judgment is sought." *Terry v. Ashcroft*, 336 F.3d 128, 137 (2d Cir. 2003) (quotation marks omitted). However, "conclusory

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statements and mere allegations [are] not sufficient to defeat a summary judgment motion.” *Davis v. State of New York*, 316 F.3d. 93, 100 (2d Cir. 2002).

In employment discrimination cases such as this one, “[i]t is now beyond a cavil that summary judgment may be appropriate even in the fact intensive context of discrimination cases,” and that “the salutary purposes of summary judgment-avoiding protracted, expensive and harassing trials-apply no less to discrimination cases than to . . . other areas of litigation.” *Adbu-Brisson v. Delta Airlines, Inc.*, 239 F.3d 456, 466 (2d Cir. 2001) (internal quotation marks omitted) *See also Meiri v. Dacon*, 759 F.2d 989, 998 (2d Cir. 1985) cert denied, 474 U.S. 829 (1985) (summary judgment appropriate in employment discrimination cases even though such cases involve the employer’s intent or state of mind).

As in any other case, “an employment discrimination plaintiff faced with a properly supported summary judgment motion must do more than simply show that there is some metaphysical doubt as to material facts. . . . [H]e must come forth with evidence sufficient to allow a reasonable jury to find in [his] favor.” *Brown v. Henderson*, 257 F.3d 246, 251 (2d Cir. 2001) (citation and internal quotation marks omitted).

The same standard applies, of course to the defendant. What is sauce for the goose is sauce for the gander. The problem with defendant’s argument is that this is not an employment discrimination case.

II. GILLETTE FAILS TO OFFER ANY EVIDENCE THAT IT ACTED IN ACCORD WITH THE PLAINLY STATED REQUIREMENTS OF THE PLAN

As will be set forth the plan is specific on the standard for voiding stock options. There is no evidence whatsoever that meets the standard of “substantial and

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demonstrable” damage to Gillette. Nor could there be because the factual chronology set forth by Gillette demonstrates conclusively that Gillette denied Cicvara stock options “automatically” upon termination.

III. IN CONTRAST CICVARA’S CASE IS CLEAR, SUPPORTED ENTIRELY WITH UNCONTESTED (AND UNCONTOVERTIBLE) FACTS.

Cicvara, in his cross motion, has demonstrated that he was denied stock options, “automatically” (a word used by Gillette) with no investigation concerning the need to allege demonstrable loss to Gillette. As Cicvara’s affidavit affirms no such loss did or could have occurred.

IV. CICVARA CONTENDS THE PLAN’S LANGUAGE IS CLEAR AND UNAMBIGUOUS. HOWEVER, IF THERE BE ANY DOUBT ABOUT THE IMPORT OR INTENT OF THE PLAN THEN THE DOUBT SHOULD BE RESOLVED AGAINST THE PLAN’S SCRIBNER’S.

The law of contracts is so clear on this proposition that it would be an insult to the court to load down this file with citations. Simply stated, if there is ambiguity in contractual language it is to be construed against the entity responsible for the drafting.

There can be no question that contract rules apply in this case, since Gillette has repeatedly referred to the issues as ones of “contract” law.

It is a basic principle of law that the language of the plan should be interpreted if there are any ambiguity against Gillette.

In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.

- a. Rationale.* Where one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party. He is also more likely than the other party to have reason to know of uncertainties of meaning. Indeed, he may leave meaning deliberately obscure, intending to decide at a later date what meaning to assert. In cases of doubt, therefore, so long as other factors are not decisive, there is substantial reason for preferring the meaning of the other party. The rule is often invoked in cases of standardized contracts and in cases where the drafting party has the stronger bargaining position, but it is not limited to such cases. It is in strictness a rule of legal effect. Sometimes called construction, as well as interpretation; its operation depends on the positions of the parties as they appear in litigation, and sometimes the result is hard to distinguish from a denial of effect to an unconscionable clause.

Restatement of contracts, Section 206. To the effect discussing the general rule see Semmes Motors v. Ford 429, F.2d 1197 (2nd Cir. 1970).

V. PLAINLY SPOKEN GILLETTE MIGHT HAVE A RIGHT TO TERMINATE CICVARA, IF THIS WAS IT'S THE ONLY MOTIVE BUT IS GOVERNED BY ITS OWN PLAIN LANGUAGE TO HONOR THE STOCK OPTIONS.

Gillette has repeatedly stated that the issue presented by the instant litigation is not an asserted claim of wrongful discharge but that the only issue is a contractual claim concerning the stock option plan.

Gillette mistakes the basic issue which is not whether Gillette could terminate Cicvara, nor its motives for doing so, but whether Gillette followed its own Plan. Plaintiff

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contends, and supports by Cicvara's affidavit that there was no demonstrable harm to Gillette.

Gillette claims it had an "automatic" right to terminate Cicvara. See Gillette's Statement of undisputed facts at paragraph 57. This is clearly not the language of 6(f)A or B and negates Gillette's position.

Many courts have distinguished between wrongful conduct and "gross" misconduct. For example, a harasser's behavior may be "inconsiderate, rude, vulgar, uncooperative, unprofessional and unfair" but not be outrageous."

Miller v. Equitable Life Insurance Society, 181 Ill. App. 3d 954, 957, 537 N.E. 2d 887, 889 (1st Dist. 1989)).

Another case found a harasser's conduct was "insulting, undignified, annoying and perhaps representative of the rough edges of society, but not extreme or outrageous." Bowersox v. P.H. Glatfelter Co., 677 F. Supp. 307 (M.D. Pa. 1988).

These principles are precedents for the court finding that Cicvara is entitled to his stock options while, as one treatise has stated, there are no hard and fast rules" therefore the issue of "gross" should be left to a jury. See Sexual Harassment by Alden and Moore section 8.

VI. GILLETTE CITED SECTION 6(f)A AS JUSTIFICATION FOR DENYING THE STOCK OPTIONS BUT FAILED TO FOLLOW THE PROCEDURES THEREIN.

Furthermore, Gillette's submission to this court states Cicvara was terminated pursuant to Section 6(f)A of the plan. See Attachment H. to Peggy W's affidavit. This section requires a demand for performance which was never made. Thus on the face of Gillette's own pleadings the voiding of his stock options was improper.

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On this and this alone Gillette should be denied summary judgment since its own documents create an issue of fact, i.e. whether Cicvara was terminated pursuant to 6(f)A or 6(f)B.

VII. WHILE CICVARA'S CONDUCT MIGHT BE DEEMED "INAPPROPRIATE" IT CANNOT BE SO DEEMED AS A MATTER OF LAW.

Cicvara was charged with what the court clearly could call "an unsolicited and uninvited" sexual overture, which even he admitted could be deemed "inappropriate." But Gillette asks this court to hold as a matter of law that this conduct was "Gross," denying that this was a question of fact for the jury to decide, not the court. A jury could find such conduct wrong, and a jury might sustain such conduct justified termination. But the language of the plan requires a higher standard and the word "gross" created a factual determination by a jury. Gillette's motion would remove from a jury the option to determine the level of sanctions Cicvara has incurred.

Courts have quite routinely upheld sexual harassment as grounds for termination. Such conduct clearly is adequate basis for termination. Hamilton v. Hudson (cited on page 12 of Gillette's brief).

But whether Cicvara's termination was justified is not the issue presented in this case. The plan specifically and clearly sets forth a higher standard for denial of earned and accrued options.

Simply stated, if after a jury trial with the same evidence presented to the court and a jury, would the court be justified in directing a verdict that as a matter of law, Cicvara's conduct meet the higher standard of "gross." That is what Gillette asks the court to do, contrary to precedents. Sexual Harassment supra.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

PREDRAG CICVARA, : Civil Action No. 3:09-CV-2054 (JCH) (HF)
Plaintiff, :

V. :

THE GILLETTE COMPANY and PROCTER & :
GAMBLE COMPANY and DURACELL, AN ENTITY :
OF UNKNOWN FORM and LYNNE BURNETT, :
Defendants. : May 26, 2011

NOTICE OF CROSS MOTION
FOR
SUMMARY JUDGMENT

The Plaintiff respectfully moves for an order from the Court granting the Summary Judgment and the Amended Complaint in its entirety, pursuant to Fed. R. Civ. P. 56.

As set forth in Plaintiff's Memorandum of Law in Support of his Motion for Summary Judgment; Plaintiff's Statement of Undisputed Material Facts Pursuant to Local Rule 56.1(a)(1); together with references to Defendants Admission of undisputed facts, and Affidavit of Plaintiff and upon all of the papers and proceedings herein, Plaintiff respectfully submits that he are entitled to an order granting Summary Judgment in his favor on the Amended Complaint.

Plaintiff

By L/S
Igor I. Sikorsky, Jr.
P.O. Box 38
Unionville, CT 06085
(860) 675-5313
CT Fed. Bar No. 04233

Case 3:09-cv-02054-JCH Document 85 Filed 05/26/11 Page 2 of 2

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CERTIFICATION

This is to certify that the copy of the foregoing was sent by U.S. Mail to:

Attorney Edward Cerasia, II
Seyfarth Shaw, LLP-NY
620 Eight Avenue
New York, NY 10018

L/S

Igor I. Sikorsky, Jr.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

PREDRAG CICVARA, : **Civil Action No.3:09-CV-2054 (JCH) (HF)**
Plaintiff, :

V. :

THE GILLETTE COMPANY and PROCTER & :
GAMBLE COMPANY and DURACELL, AN ENTITY :
OF UNKNOWN FORM and LYNNE BURNETT, :
Defendants. : **May 26, 2011**

MEMORANDUM
IN SUPPORT OF CROSS MOTION
FOR SUMMARY JUDGMENT

Plaintiff here in submits his Motion for Summary Judgment, supported by a memorandum of law in support as well as Plaintiff's memorandum in opposition to Defendants motion for Summary Judgment. Since the issue are so interconnected Plaintiffs filing of memorandum, statement of facts and supporting documents cover both Defendants Motion and Plaintiffs Cross Motion.

PRELIMINARY STATEMENT

Defendant mistakes the Plaintiff's cause and seeks to create a smoke screen by alleging sordid details of the clumsy and wrongful efforts of Predrag Cicvara to play the role of seduction in chief. This is not wrongful termination case. The repeated description Plaintiffs conduct (which even he admits were "inappropriate") only clouds the issue.

This case is not about whether Plaintiff's conduct Justifies Terminations. It is about whether Gillette acted in accord with its Stock option plan. It is to use Defendants language, about whether there is credible, admissible evidence that Gillette has offered no evidence, nor can it under the undisputed facts, that it followed its own plan.

Briefly stated Gillette seeks to misled the Court to cover up the fact that it confused its right to fire Cicvara with its duty to honor the terms of its Stock Option Plan. These are markedly different issues, governed by different legal standards.

The issue presented is not whether Gillette had grounds to terminate Cicvara; the issue is whether, without investigation and contrary to the Plans direct language Gillette was entitled to "automatically" revoke his Stock Options.

In its arguments seeking (successfully) to limit Plaintiffs Discovery efforts Gillette's repeatedly has argued that this case was limited to the stock option issue, rather than any claims concerning the motives to terminate Cicvara. So now it is strange that Gillette devotes all its memorandum to emphasis what Cicvara was accused of doing.

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**MEMORANDUM
OF LAW**

Plaintiff herein relies on the memorandum submitted in opposition to Gillette's Motion.

WHEREFORE Cicvara states there is no material issue of fact concerning whether Gillette acted in accord with its plan in "Automatically" denying the stock options.

Respectfully Submitted

By L/S
Igor I. Sikorsky, Jr.
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Case 3:09-cv-02054-JCH Document 87 Filed 05/26/11 Page 1 of 3

**UNITED STATES DISTRICT COURT
FOR DISTRICT OF CONNECTICUT**

PREDRAG CICVARA, : **Civil Action No.3:09-CV-2054 (JCH) (HF)**
Plaintiff, :

V. :

THE GILLETTE COMPANY and PROCTOR & :
GAMBLE COMPANY and DURACELL, AN ENTITY :
OF UNKNOWN FORM and LYNNE BURNETT, :
Defendants. : **MAY 26, 2011**

PLAINTIFFS STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1(A)(1)
IN SUPPORT OF HIS CROSS MOTION FOR SUMMARY JUDGMENT

Pursuant to Local Civil Rule 56.1(a)(1), respectfully submits this statement of undisputed material facts in support of his cross-summary judgment motion and in opposition to Defendants Motion for Summary Judgment (1).

- 1) The Plaintiff has no dispute with the facts as set forth in Defendants pleadings for Paragraph 1 to 4.
- 2) The provision of 6(f)B states expressly that Plaintiff's must be found to be guilty of "gross misconduct which was demonstrably harmful to the Defendant".
- 3) There was not a scintilla of evidence offered of any "demonstrable harm to the Defendant".
- 4) Plaintiff was terminated within one day his conduct came to the attention of the Defendant and the next day after the investigations took place. These are the dates relied on by the Defendant in its statement of undisputed facts.
- 5) The Defendant made no effort to ascertain any demonstrable harm to Gillette and declared that his termination was "automatic". (see Defendants Statement at Para 57).

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- 6) Pursuant to the plan Section 6 (f) (i) Plaintiff sought to exercise his options within the time set forth in the plan. (see Affidavit of Plaintiff).
- 7) The Defendant has refused and continues to refuse to honor Plaintiff election on the grounds that his termination for cause, “automatically” voided options.
- 8) At the time of his termination Plaintiff was entitled to options in the as set forth in Exhibit B attached.
- 9) Plaintiff was terminated on June 15, 2009 after a telephonic consultation with a Company Attorney and notified on June 16, 2009 that his options were terminated. (see Affidavit of Peggy Wilczewski, and Exhibit H, in Defendants Motion).
- 10) No effort what so ever was to investigate, whether the Plaintiff’s conduct substantially and demonstrably adversely affected Gillette and / or its subsidiaries.
- 11) Plaintiff has exhausted all administrative and / or appeal remedies available to him.
- 12) If there were any remedies available Defendant has, waived such remedies.(Affidavit of Cicvara).
- 13) Gillette has offered no evidence or authorities that Plaintiff conduct was “gross misconduct” as a matter of law.
- 14) Gillette offered no evidence that Plaintiffs conduct materially and demons ratably was injuries to the Company.
- 15) Gillette made no effort to investigate to determine if there was injury to Gillette pursuant to terms of the Plan.
- 16) The letters of dismissal states Gillette terminated Cicvara because of an alleged violation of 6(f)A.

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17) The terms of 6 f (A) expressly require a form of progressive discipline in the requirement
a failure to perform substantially his duties.....

"after a written demand"

18) No "written demand" Pursuant to 6 f (A) was sent by Gillette and / or received by
Cicvara.

Plaintiff

By L/S
Igor I. Sikorsky, Jr.
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Unionville, CT 06085
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Igor I. Sikorsky, Jr.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

PREDRAG CICVARA, : Civil Action No.3:09-CV-2054(JCH) (HF)
Plaintiff, :

V. :

THE GILLETTE COMPANY and PROCTER :
& GAMBLE COMPANY and DURACELL. :
Defendants. : MAY 25, 2011

AFFIDAVIT
OF
PREDRAG CICVARA

Personally appeared Predrag Cicvara and gave oath to the facts herein after set forth:

1. The factual data concerning my dates of hire, job duties and responsibilities as set forth in paragraphs 1 – 4 in Defendant’s Statement of Undisputed Material Facts are accurate and agreed upon.

2. On June 15, 2009 I was terminated for “Cause” by P&G Company. The specific reason for termination, at the time of termination, was never, either verbally or in written form, disclosed to me. The circumstances will be explained later in my affidavit. Let’s, for now, concentrate on the stock options as a Count 1 of this particular case.

3. The options that I have received are correctly listed in paragraphs 51 – 55 of Defendants’ statement of Undisputed Material Facts.

4. Following my termination I made a timely effort (in early July, 2009) to exercise the options accrued to me as an employee of the defendant. My attempt to exercise was denied, for the reason stated in the letter from Peggy Wilczewski, of Duracell’s HR Department, sent on, or around June 16th, 2009 (Exhibit A).

5. In this letter, Peggy Wilczewski wrote: “**Section 6 (f) (A)** of the Gillette Company 1971 states that “if any employee Participant is discharged for Cause, **as hereinafter defined**, all his options shall immediately be cancelled effective as of date of termination of his

employment". The Gillette Plan's definition of "discharge for Cause" includes each of the following:

- (A) the Participant's continued failure to perform substantially his duties with the Company or any of its subsidiaries (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for performance is delivered to Participant by an officer or a senior manager of the Company or the subsidiary which identifies the manner in which the Board of the elected officer or manager believes that participant has not performed his duties;
- (B) the Participant's engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary; or
- (C) the Participant's conviction of a felony or a plea of nolo contendere by Participant with respect thereto. "

6. In her letter Peggy Wilczewski clearly stated that it is because of the Section 6 (f) (A) that I was denied in my attempt to exercise stock options. An (A) reason, cited above, refers to the continued failure (*by a participant*) to perform substantially his duties.

7. At no time throughout my employment I was given any of the procedural warnings mandated by said Section 6. (f) (A).

8. On the contrary, throughout my employment in Duracell, I was always an excellent worker, and have never received any yearly review that was less than fully satisfactory. I received the stock options rewards for my contribution to the company results in 2001, 2002, 2003, 2004 and 2005. In 2005 Gillette Company was acquired by P&G. In January 2005, I have also received an award from Duracell VP of Sales (Jim O'Donnell) for advancing and exponentially growing the Company's OEM business.

9. In May 2009 I received notice of an increase in my salary as set forth in Exhibit B hereto. On July 1, 2009 I was to be given even more responsibility, increasing number of direct reports to me from two to five (Cicvara Dep. page 16, and page 33).

10. Therefore the Section 6 (f) (A) couldn't be applicable at all in my case, and it could be attributed to a possible error by Ms. Peggy Wilczewski, as she may not be an expert in explaining, or did not really care to explain the legal issues to the already former employee,

whose life was destroyed by, amongst the others, her careless actions. Also, it is interesting that this error would be committed at the moment when Peggy was “apologizing” in this letter for another error committed by the stock administrator in Cincinnati who told me when I called, that in spite of the fact that I was terminated for “cause” I can exercise stock options within 30 days of the day of termination. The fact that I was told that, would actually contradict the statement from Mr. Muncy: “automatically cancelled as a result of his termination for cause”, used throughout various documents served by the Defendant to Your Honor. The numerous errors that Duracell HR committed while giving these explanations, only confirm the fact that they did not even bother to precisely justify their actions, taking an arrogant position with the motto: “the facts are what we tell you that they are”.

11. Inexplicably, in their July 7, 2010 document “Defendant Memorandum of Law in Opposition to Plaintiff’s Motion to Compel Discovery” at page 5 (8 of 20), served to Your Honor, the Defendant Lawyers repeated the same: “By letter, dated June 16, 2009, Wilczewski informed Cicvara that, pursuant to Section 6 (f) (A) of The Gillette Company 1971 Stock Options Plan, Cicvara’s stock options were cancelled as a result of his termination for cause.” This document was created more than one year after the letter (Exhibit A) was created and all that time was at Defendant hands to make a proper determination as to what exact paragraph was applicable in this particular case. What exact paragraph is applicable indeed? The short answer is – none.

12. It is obvious that the section 6 (f) (C) couldn’t be applied as I was not convicted of a felony as required in sub-paragraph C of the aforementioned. Thus through logical deduction, one would have to conclude that it must be the condition listed in section 6 (f) under paragraph (B). During the deposition I have asked Edward Cerasia II, not once but twice, about what paragraph (A, B or C) is applicable in my case (Cicvara Dep. page 156-157, page 159) and finally, after the deposition (*and 18 months after my life was completely destroyed*) it seems that Defendant understood that the cancellation is not automatic, as now, they finally admitted and agreed, through their “Statement of Undisputed Facts” (page 13, paragraph 50) that it is indeed B paragraph that is applicable to this case (*except it actually is not, but it is the only one that makes some sense*). However that did not prevent Defendant’s Lawyer to wrongly claims, throughout the document that Cicvara’s stocks are “automatically cancelled as a result of his termination for cause” (Id. page 14, paragraph 57). Here, the Defendant is hoping that the

maxima: “A lie told often enough becomes truth” will work wonders in this case. Granted, they have found another person to “blame” as it was Mr. Jason Muncy – who has stated this, therefore the Defendant position is: It is not wrong, for Lynne Burnett, Peggy Wilczewski, and for the Defendant lawyer, to repeat this untrue statement numerous times throughout many documents served to the Court, as “Mr. Muncy stated that, so it must be true”. It seems they are pretending that they don’t understand that it is not Mr. Muncy opinion that counts, as it is completely irrelevant what he “thinks” or what his “opinion is”. The only relevant thing here is The Gillette Company 1971 Stock Plan and what is written in it.

13. What is stated in paragraph (B) clearly defines that the condition for cancelling the options of somebody who was terminated for “Cause” is if: “the Participant’s engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company or its subsidiary”.

14. Therefore the part that Defendant would have to prove, which they failed to do, would be: “materially and demonstrably injurious to the company”. They also would first have to prove that my conduct was illegal – which it was not, or that it represents “gross misconduct”, which they do claim, but failed to prove, throughout their documents, in spite of the fact that they were carefully crafted the fabricated evidence to strengthen their case, and allowed the others (Bel Liu) to freely do that. This will be explained later in my affidavit. However, just for the sake of argument, let’s suppose here that I actually “did harass and did make unwanted sexual advances towards Bel Liu” and let’s see if that qualifies for cancelling of my stock options. I will only list the facts.

15. Not only that the Defendant never even tried to prove that this statement indeed applies in my case, they actually refused to disclose the business results, level of their business with Practical, and lists of purchase orders issued by Duracell to Practical in the last several years, that Plaintiff had asked for repeatedly. Why? Because there was not any negative impact to Duracell business that Plaintiff’s behavior, even if the Defendant allegations were true (and they are obviously not) would have caused.

16. The e-mail that Mr. Andrew Yau sent to Erik Lawson (Exhibit C), only confirms that Practical was in position to beg Duracell for more business (Cicvara Dep. page 23-24). Ironically, the accusations by Austin Lin are actually emphasized by Mr. Yau, for the reasons completely opposite from what paragraph B of the The Gillette Company 1971 Stock Plan is

asking for (negative impact to the company's results – a material impact). Andrew sets me up, using Bel (*and destroying my life in a process*) in order to gain leverage with Duracell, that in his mind, would enable Practical to get more business from P&G, not less.

17. Duracell business could not materially suffer, even if Practical would have decided to completely cease their cooperation with Duracell (jut the opposite of what they were actually doing). I have explained Duracell policy with the contractors, as always keeping them hungry and always having more than just one solution for what was needed from them (Cicvara Dep. pages 44-45).

18. Because my termination, for alleged "Cause" did not cause any material losses to the company, the stock options that I deserved and was awarded from 2001 until 2005, must be reinstated, even if it is assumed that I actually committed what Defendant is accusing me of (which I did not). Since, in the paragraphs to follow, I will prove that, similarly as for the cancelled - already awarded options, my lost salaries, my lost bonuses, my lost pension contribution, my lost future stock options and my lost future raises and promotions are unjustly taken away from me, by the illegal actions and decisions of the company's employees, the decision about this case should be brought, without wasting any more of tax payers money – just by Your Honor, without even proceeding with the trial activities, as the ample evidence exist to support such a decision. So let's now continue to describe the other facts.

19. I was born on September 19, 1954 in former Yugoslavia. I graduated from secondary school in 1973, as the best student that ever attended the school and from college in 1977, at University of Zagreb, Croatia (Electrical Engineering – Control Systems Theory) as the second best student in Class of 1973. I got three Best Student Awards from the Rector of University of Zagreb during my studies. I married in 1983 with my wife Lillian and our son Viktor was born in 1984. In 1991, I was General Manager of "TPK – Service Division" in Zagreb, Croatia, on my way to become General Manager of the entire TPK company (about 4,000 employees). I have enrolled in the first (pilot) MBA program in Croatia, in 1990, a joined effort of Florida State University, Tallahassee, Florida and University of Zagreb – School of Economics, with the best GMAT (administered by University of Florida) score of all students who were accepted.

20. After the outbreak of a civil war in Yugoslavia, in 1991 we immigrated to USA in 1991. My wife acquired two Master Degrees, in French Language and Literature in 2002, and in Spanish Language, in 2008. She currently works (*very hard*) at two places (*as we had to survive on her income only*), as a World Language Teacher (French and Spanish Language) in a High School and as a Spanish Teacher at University. I have acquired Master of EE degree at Polytechnic University, Brooklyn, NY (Hawthorne, NY campus). Our son Viktor graduated from Fairfield High School in Fairfield, CT, in 2002, and was the first student from that school, in the last 25 years, who was chosen as one of two Presidential Scholars from the State of CT in 2002, when he, together with us, travelled to Washington DC in June, and spent four-days there, together with the other 119 presidential scholars for 2002, to meet, among the others, with the president George W. Bush. Viktor graduated from Columbia University, New York, NY in 2006, and is currently employed and lives in New York City.

21. On November 1st, 2000 I started to work for Duracell, at the time owned by The Gillette Company, as a Manager of WW Technical and Consulting Services. In April 2002, after massive resource cuts in the company, I got additional responsibilities that included forecasting, developing new business opportunities, analyzing business results, promoting new, more efficient processes, marketing and pricing responsibilities, all on top of my technical and consulting responsibilities.

22. Because of my extraordinary analytical abilities and my strong mathematical background, I was an instrumental part of the unprecedented growth of Duracell OEM sales business, that grew from about \$18 MM and 75MM cells in 2002, to over \$70MM and over 400MM cells in 2006-2007 fiscal year. Little did I know at that time that at least a part (but a significant one) of that growth was actually causing a great harm to Duracell as a company, as the whole profit that our OEM Sales Group generated (roughly about \$40MM from 2002-2006) was nearly completely wiped out by the harm that the diversion sales, that must have been known to the very influential people within the company, caused to Duracell's net income (Cicvara Dep. pages 181-183, Exhibits D, E and F). Vast evidence of this activities existed on my business computer, which was very well known to the influential people in Duracell and P&G (please see statement of Rob DaPra on the page 2 of the Exhibit F).

23. In April 2008, I was transferred to QA Department where I held the position of Lighting QA Leader for a few months, and then I was promoted to the position of QA Manager

in July 2008. After that, due to the excellent job that I was doing at my position, there was a plan in place (by Kevin Babis, my supervisor) to broaden my responsibilities with a new position that would include five (up from two) people reporting to me, as of July 1st, 2009 (three of them being in Asia). This did not happen as I was terminated from my employment with P&G Company on June 15th, 2009.

24. From May 31, 2009 until June 13, 2009 I went on the multiple-country business trip to help in auditing of four different manufacturing facilities, belonging to three different companies. Mid part of this trip included the audit of two Practical's factories, one in Indonesia, called Era-Cipta, situated in Medan the other in Thailand, called Practical, situated in Bangkok. The first one was audited on June 4-5, the second on June 8-9. Bel Liu, from Hong Kong, Practical General Manager, was accompanying Duracell's audit team on these trips.

25. On June 8, 2009 I exchanged five (5) text messages with Bel in a period of 8:57 PM until 9:07 PM local Bangkok time (part of Exhibit G attached to this affidavit – Bates pages 000415 and 000416, Cicvara Dep. page 184, Cicvara Dep. Exhibit G). In the message #4, sent on 9:05 PM on June 8th, Bangkok time, Bel, freely and entirely by her own decision, invited me to come to her room, even though previously, in message #2, she stated that she is tired and want to rest, and then inexplicably changed her mind, which did make me wonder, but I did not give it too much thought. I answered, in the 5th message that I will come in a minute or so, which I did.

26. During about 50 minutes that I was in her room, she was on the phone with her husband for more than 15 minutes (Cicvara Dep. page 101-103). She also called her boss to give him some details for tomorrow's call to Duracell purchasing – as they were trying to lower their price for one of the flashlights in order to capture the business with Duracell that they desperately needed (Cicvara Dep. Id.). The things that happen between us were somewhat sensual. I have never done anything to physically, or in any other way harm her (Cicvara Dep. page 68, pages 85-86). Bel Liu confirmed that in her statement to Peggy Wilczewski and Dina Schmude on June 11, 2009: "In conclude, he did the rude thing but he didn't threaten me or shout at me. Every word he said was gentle. He did not do any violent action." (Bates page 000617). .

27. On June 9th, 2009, Austin Lin, an employee of Duracell QA Department who reported to me at the time, went to Duracell HR to report that "Mr. Cicvara had made repeated unwanted sexual advances toward Ms. Liu during a business trip in Asia" (Dina Schmude, Dec. page 1, par.3)

28. After my termination on June 15th, I thought about the motives that fueled the actions of Austin Lin, Andrew Yau (and indirectly Bel Liu, through the strong influence of Austin Lin and her boss Andrew Yau) and Lynne Burnett that directly caused my termination “for cause”. Immediately after my termination, I suspected that my visit to Bel’s room, of June 8th, was a set-up, but I was not sure that is the case, even though I stated that it was my belief during the deposition (Cicvara Dep. pages 111-115, pages 142-143,). However, after carefully reviewing all material that was presented by Defendant on April 15th, 2011, **as parts of it were purposely not disclosed to Plaintiff during the discovery phase**, even after repeated requests and Defendants’ claims that they have provided all of the evidence they had in their possession, the conclusion can be made, with certainty and by the independent observers as well, that this surely was the case. Three forces were at work to make sure that I will be fired from P&G in June 2009, and each one was additionally fueled by the other. The first one was Austin Lin’s strong desire to retaliate to me (completely independent of the other two) that I will explain later. The second one was an attempt by Andrew Yau to gain a strong leverage with Duracell/P&G that would help Practical to accomplish multiple goals. The third one was the desire of certain people at Duracell helm, to get rid of the person (me) who have learned and alerted Duracell management (*I alerted them instead of P&G hot alert line and that was a terrible error on my part*) about the diversion of batteries to Latin America (Cicvara Dep. page 181-183). To them, the fact that they can accuse me of “sexual harassment” and get rid of me immediately (as they actually did on June 15th, 2009) came as a god given gift (Cicvara Dep. page 7, page 12-13, page 14, page 191, Exhibits D, E and F).

29. Austin Lin made the decision to report me to HR **entirely by himself**, practically deciding in lieu of Bel Liu what “must be done”(Exhibit H - page 2, Cicvara Dep. page 95,). Austin Lin spent 7 weeks in China (although the work could have been completed in three weeks at most, Cicvara Dep. pages 112- 113) during February, March and April 2008. While in China, Bel Liu taught him Mandarin and he engaged in an intimate relationship with her, the fact that I have found only after I was terminated, on or about June 19, 2009 (Cicvara Dep. pages, 55-56, pages 112 -113), from Brian Hesse (Duracell) and David Mathieu (Ideaz). Brian and Dave are willing to support their statements as witnesses in the Court of Law, if required. In April 2009 Austin lied on his expense report from another long trip in China and Korea, where he added about 9 additional days of his own leisure, about seven of them spent in Korea (with his

girlfriend), to attend a one hour meeting with one company (Cicvara Dep. pages 56-57). I contacted Kevin Babis, my supervisor and we had a long conversation with Austin. Austin admitted to lying and paid certain portion of bills by his own money, and took several days of vacation to cover the days. However, this was never reported to HR, and only Kevin Babis, I and Austin Lin have any knowledge about it. The official expense trip records do exist in the P&G database but the Defendant stubbornly refused to produce them, even after my repeated requests.

30. While Defendant produced the declarations of Lynne Burnett, Peggy Wilczewski, Dina Schmude and Kevin Babis, they did not produce the declaration from Austin Lin, and they did not produce the declaration from Bel Liu either (for the very obvious reasons). Therefore all that Lynn, Peggy, Dina and Kevin are stating is just their opinion based on hear-says and lies fabricated by Bel Liu and Austin Lin. Produced declarations are not based on facts, because Defendant did not produce any facts, except for constantly trying to fabricate my statements starting with the “notes from the meeting on June 15, 2009” (a document that is fabricated itself) and then manufacturing their opinions by combining my statements from the manufactured notes or by misrepresenting my statements, partially, and sometimes entirely.

31. The second force was an attempt by Andrew Yau to try to gain a strong leverage with Duracell/P&G that will help Practical to accomplish multiple goals: a) To get rid of the person (myself) who discovered false QA records made by Practical during the first day of audit in Bangkok (June 8th, 2009), which was a threat for them to lose all of the business with P&G (QAKE score less than 50% - Cicvara Dep. pages 25-26, pages 145-146) and who contributed to the rejection of the shipment of 46,000 D flashlights in May 2009 (Cicvara Dep. pages 26-31, pages 60-61, page 188-189) as I always had the best intent to act justly and to protect best interests of the company I worked for (Cicvara Dep. page 46-47, page 190-191) - b) To gain more business from Duracell in times, as at the peak of the economic crisis, in June 2009 they desperately needed it (Cicvara Dep. page 21-23,) knowing that their position was very weak (Cicvara Dep. pages 44-46) and by directly using my alleged “harassment” of their employee (Bel Liu), to put Duracell/P&G in a defensive position (Cicvara Dep. page 23-24). They had to act fast, as it was important to them to get the “harassment case” going on before the official audit results were disclosed and recorded in P&G database – as, in the case the score came out to be less than 50% the additional claims could easily be fabricated – that is for example: “Predrag

Cicvara wanted to retaliate to Bel Liu, because his “unwanted sexual advances” were not fulfilled by her”. However, this further statements were not necessary, as their score was 55% (Lori and I agreed to give them a chance to improve), and I believe that fact they actually got the passing score (55%), coupled with the fact that it was Austin who reported “my misconduct”, without even waiting for Bel’s approval, contributed to the strong sense of guilt and suddenly found conscience by Bel Liu, leading her to profusely apologize to me for her actions, not once but twice, the first time during the night of June 9th, 2009 (Cicvara Dep. pages 109-112).

32. So Mr. Andrew Yau decided to activate the controlling element that he carefully put in place over the years, through Bel Liu. One of her tasks indeed was to entertain Practical’s customers in a strange way that would enable Practical to exert a strong control over their business partners after certain period of time (Cicvara Dep. pages 54-56, page 94).

33. The third force was a very subtle one and came from inside the Duracell high management structure. My termination on June 15th, 2009 was orchestrated by a person who must have been at the Duracell top position or very close to it, as the things that HR Department has done to get rid of me in the most surgical manner, couldn’t have been done in a normal business environment that would allow the accused to at least learn who he is accused from, what is the true nature of allegations and what true evidence exist about the accusations. All of this was denied to me – as I was accused, investigated, prosecuted, judged and convicted all by the same set of people and all of it done in about 10 minutes on June 15th, 2009. I have talked about this in my deposition (Cicvara Dep. page 12-14, pages 115-116, page 140, pages 190-191), for example about the fact that my computer and my Blackberry just disappeared (Cicvara Dep. page 148) and Defendant never produced any documents that I have asked them to produce off of these two devices, in spite of the fact that my lawyer at the time asked Defendant, in his letter to a Duracell’s lawyer, dated July 9, 2009, to preserve these devices as a part of a preservation of evidence (Exhibit I). Sure enough, in his e-mail about the diversion, Rob DaPra (Duracell VP of Business Development) mentioned the fact that all evidence for the diversion case was on my computer (Exhibit F, page 2) so it is no wonder the computer promptly disappeared, with all of the evidence related to the diversion case and to this case as well. Obviously, it was much more important for somebody in Duracell, to destroy the evidence for diversion, than to preserve the evidence about my wrongful termination but the act actually served their goals in both of these cases (leading to the tragic consequences for my life after the termination).

Here are just facts, and I would leave it to Your Honor to make conclusions about what was going on here.

34. On or about June 9th, 2009 Lynne Burnett (Lynne Burnett Dec. Page 2, Parag. 3) “gave Ms. Schmude guidance on how to handle Mr. Lin’s report (*she knew it was Austin Lin who reported it and yet did not question the motives*), including that the Human Resources Organization should speak with Ms. Liu and Mr. Cicvara to investigate the allegations”. This statement is very carefully constructed by Defendant lawyers, to exclude any single individual (*as if the Human Resources Organization could and should speak?*) from the responsibility to talk to me (at the same time as with Bel Liu) to determine if the accusations are real or not.

35. In the Defendant notes of Undisputed Facts, page 10, paragraph 37, it is written: “who (Lynne Burnett) advised Schmude (*this time it is a human being*) to investigate the incident by speaking with both Liu and Cicvara”. Nobody from HR ever contacted me even if they had ample opportunities from June 9th 2009, until June 13, 2009 when I left Asia flying back home from Hong Kong. They certainly did have time to talk and communicate to Bel Liu, constantly apologizing for inconvenience they have causing to her, and gave her ample of opportunities to add to her lies and manufactured “evidence” that will be proven later.

36. In Dina Schmude Declaration (page 1, paragraph 3) Dina stated: “Ms. Burnett advised me to investigate the allegations by speaking to Mr. Liu”. There is absolutely no mentioning of speaking to Mr. Cicvara. This way, the Defendant lawyer has a construction where everybody can claim that the right orders were issued, but they were just misunderstood by Dina Schmude. Yet, does it relieve the head of Human Resources Department (Lynne Burnett) from the responsibility to conduct a just and proper investigation? No, it does not, and the point is Lynne Burnett did not want anybody to talk to me – her plan was to get rid of me on June 15th, in a surgical manner, which she did. In fact, instead of contacting me immediately and disclosing the allegations against me promptly, Duracell HR personnel spent all their efforts in collecting the additional proofs against me, even allowing the blatant manufacturing of the evidence as it will be proven later, once again under the motto: “Somebody else (Bel Liu) did it, and we just accepted her statements as the truth, so we are not responsible for our claims that we believe it is the truth”. I am not sure if that is enough to legally protect them but Your Honor will certainly know that better than me.

37. There is nothing that Lynne Burnett did to investigate the motives of the person who actually initiated the case – Austin Lin. Was he in Liu's room on June 8th, 2009? No, he did not. Did Bel Liu told Austin to go to HR Department? No, she did not. Bel said to me, while she was apologizing that "she was left no choice" (Cicvara Dep. pages 96-97, pages 108-112). Also, Bel's own statement said that "...he (Austin) encouraged me to report to Andrew because Predrag made me felt fear of him (*that fear was never, ever disclosed to me by Bel, so I had no knowledge of it (Cicvara Dep. Pages 101-102), even if she had –which she did not – reason to feel the fear*) no matter what the excuse was". (Bates page PG 000617). This statement directly shows that Austin did not even warn Bel that he will be the one who will report this to HR, in fact "leaving her with no choice" – which were exactly the words Bel told me while apologizing. Also, at the same page she wrote: "I told Andrew (her boss, and quite possibly more than just a boss) that I spoke to Austin and he told me to follow what Austin tells me about reporting this to P&G team. I told him I felt bad about getting Predrag in trouble. Andrew told me not to being kind to Predrag. He said he was going to tell Nitesh (Singh) that Predrag is not to work with me". (Bates page 000617). The first time Bel Liu spoke (not counting e-mails) to HR was on June 11th, 2009 – way after June 9th, 2009 when Austin Lin reported this to HR.

38. Lynne Burnett also manipulated Kevin Babis, leaving him under impression that it was Bel Liu (or her boss Andrew Yau) who reported my alleged misconduct to HR, by never disclosing to him that it was Austin Lin. Had she done that Kevin would have questioned the motives behind Austin Lin's actions. But all that he (Kevin) learned about this case was what he has heard from Lynne Burnett during the meeting on June 15th – and we will soon come to these details.

39. After I returned home, on Saturday, June 13, very late at night, I went to work on early on Monday, June 15th, 2009. After sending few e-mails, ironically one of them to Bel Liu, where I sent her QAKE (Quality Assurance Key Elements) book in Chinese, as I promised, so that they can better prepare themselves for the follow up audits, Kevin Babis, my boss came to my room and told me that HR needs to talk to me about "certain things". Even then, I did not realize what I will soon face, as there was nothing to face really, except the fact that the emotional relationship existed between Bel and me, and that certainly is not the cause to fire anybody, especially not "for cause" with such severe consequences that my whole life is entirely (and very negatively) altered by what was done to me by Duracell HR Department. I remember

that I actually thought this might have to do something with what me and my boss Kevin Babis talked to Austin Lin, who lied on his expense report back in April 2009 and we did not report it to HR, as we wanted to give him the second chance.

40. After asking me do I know Bel Liu and did I visit her on June 8th in her room in Bangkok hotel, she (Lynne Burnett), without waiting for my answer, proceeded by telling me “we have recording from her boss (Andrew Yau) answering machine (Cicvara Dep. page 141), with a lot of things that were told in that room while you were there” (which would be June 8, 2009). Then she continued with “I am not sure did she (Bel Liu) did it intentionally or not, but one way or another we know what went between two of you in that room”, adding immediately: “Do you want us to bring the recording so that you and we can hear it”. (Cicvara Dep. pages 102-103). *This conversation was in its entirety omitted from the notes that were officially provided by the Defendant, even though Lynne Burnett and Peggy Wilczewski stated that the notes are “a true representation” of what was said during the meeting on June 15th (Bates pages 000498-000501).*

41. I was in a state of shock as I realized that something serious is happening. I couldn’t comprehend where all of this was coming from. I simply answered: “Yes I was in her room on June 8th” and “no, there is no need to listen to the recording as I know exactly what was going on between us and what we were talking about”. In a hindsight that was a big mistake, as from June 15, 2009 until May 28, 2010 when we received some of the documentation we asked for, I was continuously under impression that June 8th recording really existed and that the recording will show what I was stating all along – that there was nothing even close to “sexual harassment, forced physical contact, me stating “I would rape you” etc. However, the particular recording that Lynne Burnett mentioned was never produced during the document production phase, and obviously did not even exist – therefore Lynne Burnett has intentionally lied during this meeting (Cicvara Dep. 102-103). My statements cited above are *omitted from the notes that were officially provided by the Defendant, even though Lynne Burnett and Peggy Wilczewski stated that the notes are “a true representation” of what was said during the meeting on June 15th (Bates pages 000498-000501).*

42. The only recording that Defendant has is the recording from Bel’s room from June 10th, 2009, that only proves my statements that Bel apologized to me twice, as I was continuously asking her why she is apologizing for. We included these two audio files for Your

Honor to hear and make a judgment herself, as Defendant did not include them in their set of documents (Exhibit J, parts d) and e) – on the USB flash memory).

43. Lynne also stated “you came to her room uninvited as she (Bel) told us that you just appeared on her room’s door and she let you in because you were her customer and she did not want to offend you”. I have strongly opposed such a statement as it was a blatant lie (Cicvara Dep. page 141). During the meeting I stated: “it is not true and it is easy to prove that she (Bel) invited me to come, as there are text messages on my Blackberry that can prove it easily”. So, Lynn Burnett’s statement cited here was another lie as she must have known, by reviewing Bates page 000612 (which she indeed did know according to her own Declaration, see page 2, paragraph 4), that I did not come uninvited, and that I was telling the truth about the text messages exchanged between us (as the page 000612 is all about these messages). Lynne Burnett answered: You can say whatever, but she (Bel) claims that you just appeared at her door uninvited” – which was partially true, as that actually was a part of Bel’s statement. *This conversation was in its entirety omitted from the notes that were officially provided by the Defendant, even though Lynne Burnett and Peggy Wilczewski stated that the notes are “a true representation” of what was said during the meeting on June 15th* (Bates pages 000498-000501). Not only that it was omitted but the notes that were provided as an “official and true representation” from the June 15th meeting, do not list even one word of my answer, as there is only a question typed “**Did she invite you to her hotel room?**”, followed immediately by another question but not typed in bold so that it appears as an answer: “Did she asked you to leave and did you refuse to leave?” – where another answer I have provided was also completely omitted from the notes.

44. During the meeting it was Peggy Wilczewski who was taking notes, on the block with small squares (mathematical paper) of a fairly small size, possibly compact and certainly smaller than the usual letter (A) size. I clearly remember that, as I know that at some point I thought how she is going through the pages rather quickly. Her task, by her our declaration and the declaration of Lynne Burnett, was to take the notes from the meeting, so one would certainly expect that the notes would reflect what Lynne Burnett said at the beginning of the meeting, not just that “there was a recording” but in much more details, exactly as it was told. One would also expect that such an important statement by me such as: “No, I did not come uninvited as she clearly invited me in her room (also Cicvara Dep. page 69-71) – and you can check that by

looking at text messages exchanged”, would also be captured at the notes, especially because the notes were taken in a very busy manner by Peggy Wilczewski, and she went through a lot of those small pages in during a 10 minutes interrogation, as she was flipping them fairly quickly.

45. There are so many constructed statements in the “official notes” that I could lose hours trying to clarify what was really stated and how it was misconstrued by somebody in Human Resources – I can’t say with certainty by whom. I will not do that here as it could be all proven during the trial if Your Honor chose to have one, after a careful review of evidence from both sides.

46. During the meeting I stated that I told Bel: “when you do such things with your legs, one could rape you” (Cicvara Dep. page 86-88, pages 138-141). Whatever was constructed in the notes later, especially with respect to the word “rape” is not true, as the only time that word was ever used was in the instant described above, and in the context described above. As I stated in my deposition, it might have been a poorly chosen word by me. However later it appeared on the notes that I said – this and that – not true – the only context that I mentioned the word “rape” was in that particular sentence as that is EXACTLY what I said to Bel that evening in June 8, 2009 so there is no doubt that anything else was ever told in relation with a word “rape” (Cicvara Dep. pages 86-88, pages 138-141).

47. The Defendant, however, is repeatedly and continuously using the lies like: a) “he said “I will rape you” combined with b) “I could rape you” and c) “egregious conduct of sexual harassment” throughout all of their documents submitted to the Court, even though I clearly explained what happened in many places during the deposition. For example I explained that what I did was “neither the violation of PVPs nor the violation of WW Conduct Manual” (Cicvara Dep. page 78). But the Defendants boldly follow the saying (I believe it may have been Vladimir Ilyich Lenin): “A lie repeated often enough becomes truth”- throughout all of the documents they submitted to the Court in the last 18 months, not just the set of April 15, 2011.

48. I was never given any notes after the meeting on June 15th, even to the extent where I would be asked just to confirm by my signature that the notes reflect what was stated on the meeting without asking me to agree with what was said. By failing to provide me with the notes, Defendant was given an option to tailor the notes later, to omit what they did not want to present and to add what they wanted to add, and to create newly constructed thoughts in the form of interpretations by the creator of the “new – official notes”. The first time I saw the notes

(May 28th, 2010) – I did not believe my eyes, and wanted to jump out of my skin. I just couldn't comprehend how so many lies could have been compiled on three pages of paper (even though many more pages must have actually been written during the interrogation).

49. Not only that I was not given the notes, I was never given the explanation why I was fired (Cicvara Dep, page 154). I was told at the end of the meeting by Lynne Burnett: "You are terminated with the cause, effective immediately". Then she left me with Kevin Babis and Peggy Wilczewski, to pick up my belongings (while the security guard was present at all times at my room door, with the dollies to transport the boxes with my belongings). This was the most embarrassing time of my life, as everybody who was passing by was aware of what was going on, and unfortunately, my room was at the longest possible distance from the lobby, so everybody could have seen me leaving the building in a presence of uniformed guard and Peggy from HR and my boss Kevin Babis - an excellent material for rumors that must have spread immediately throughout the building. Immediately after I had to face my wife, my son, my mother in law, my own mother and other members of my broader family. I have lost 20 pounds in the next two weeks, as was my wife too. Driving back to home on June 15, 2009, I was even contemplating suicide, for the first time in my life, that is how embarrassed and humiliated I felt (for what reason?). I took me one hour and a half to come home, even if it is a comfortable 35 minutes ride from Bethel to Fairfield, CT.

50. On June 29th, 2009 I sent an official e-mail to Peggy Wilczewski asking that P&G provides me with all of the documents (that should have included the notes from June 15th meeting) that were kept in my personal P&G files with respect to my termination from June 15th, 2009 (Exhibit K). I also asked to be provided with the specific reason of why I was terminated for cause. The official answer, sent a day later, on June 30, 2009, by Peggy Wilczewski (who copied Lynne Burnett on her e-mail, which indicates this was an official position of Duracell HR Department) was: 1. There are no any documents in your personal file that are related to your termination of June 15th, 2009, and 2. You were terminated for violating the WW P&G Conduct Manual. If this is not the blatant and arrogant obstruction of justice, I do not know what is? So, the notes from the meeting did not exist at that time? Does that statement mean that the notes were never taken? Because, if it does not, and notes were taken, than it is a plain obstruction of justice from the position of force. At that time Defendant obviously did not anticipate the possible lawsuit action by me, that is why such an abuse was taking place throughout the period

of June 9th, 2009 until the moment they were served the summon – in November 2009. This particular e-mail was never provided by the Defendant during the document production phase, when Plaintiff asked for the additional documents, on the contrary their answer was that they have already provided all documents that were in their possession.

51. The hand written notes from June 15th, meeting, were provided to Plaintiff only after repeated requests, and only in February 2011. These notes appeared to be the exact, now hand written, replica of the typed notes that have been produced by the Defendant after June 29, 2009 as an “official notes” from the meeting on June 15, 2009 – described above (Exhibit L). Notes are written on the A size paper, not on the smaller compact paper used during the interrogation on June 15th, 2009.

52. The other important document, that was never provided to the Plaintiff, in spite of the repeated requests to produce all of the available evidence, contains 8 (eight) text messages that Bel Liu forwarded to Peggy Wilczewski on June 11, 2009 (Bates page 000612 – a part of the Exhibit G).

53. If one is allowed to forward text message as an only proof of something relevant, one is given an ample opportunity to distort the original message as much as one wants. While the original message remains intact on their phone, the content of the forwarded one can be manufactured at will. So Bel (or somebody else who might have helped her to strengthen the “harassment” accusations), was given an additional opportunity to produce support for her statements, which she, without question, used to her advantage. She (they) made the first big mistake here, in wrongly counting the messages that were exchanged during the period of 8:57 PM through 9:07 PM in Bangkok, so the additional – sixth message was added which states: “I know you are not and just wanted to be with you without dirty thoughts....so let me know I need few minutes for e-mails and then can bring desert (sic) to your room if you want.” This is the message that was never exchanged and was completely fabricated in an attempt to make my intentions to come to Bel’s room “dirty”. Fortunately, an official T-mobile bill exists for June 2009, for the Blackberry (203-243-0079) I used while I was employed in Duracell, where one can see that there were 5 messages exchanged, not six (Bates pages 000415 and 000416 – Exhibit G), and those five were sent in a very different times than the times that Bel produced in her e-mail. (Exhibit G – all parts). This is a direct proof that the statements provided by Bel Liu are fabricated, with the pure intention to get me fired from P&G and to use the fact that P&G

employee “harassed” the GM of their company to their business advantage – to gain more business from Duracell (e-mail from Andrew Yau to Erik Lawson, Exhibit C).

54. Interestingly enough, Lynne Burnett knows very well the protocols that accompany these kinds of cases, as proven by her immaculate handling of another case: Ana Cardinale and Mani Parmar case, where investigation lasted longer than two months (from September 27th, 2007 until November 30, 2007) and was conducted with her giving all of the evidence to the “accused pair”, making sure that everybody got a signed copy of conclusions from the investigation, and refusing to accept the printed files as evidence, because the original computer files were not preserved on the computer (and then the manipulation is possible “as we all know,” in her own words); all this as opposed to having an “investigation” that lasted 10 minutes, giving the official answer to me that the notes do not exist at all in my personal HR file, and accepting forwarded text messages from Bel, that were obviously tampered with, as evidence in this case. Enough said.

55. All of the above facts point out that I was wrongfully fired by Duracell/P&G, so I should be compensated for all of my salaries, bonuses, pension contributions and future stock options that I would have earned at my position and my future positions within P&G. All of my stock options, that I have earned so far, from 2001-2005, should be reinstated immediately as proven earlier in my affidavit.

56. I would just like to add two things. The first: It required a lot of efforts to write this affidavit, and all accompanying documents, but it felt very good to finally being able to tell the whole truth about this case. I was given 10 minutes on June 15th, 2009 and did not stand absolutely any chance to express the truth. Then I spent seven hours giving the deposition, on December 21, 2010, and was prevented throughout it to tell the truth, by the Defendant lawyer who led my deposition. So, finally, right now, I got the chance and I managed to write down at least a part of the story (although there are much more details that would additionally prove who is right and who is wrong here, if the case goes to the Court). The second: It is interesting to see how a big company like P&G is stubbornly defending their employees, that they chose to keep away from the justice, and at the same time not hesitating to destroy a life of an employee whose only wrongdoing was to protect the interests of that same company, and who paid a terrible price for those intentions. Let’s face it – what P&G is directly protecting here is the “opinion of four employees about my behavior” that is not supported by any valid evidence as the sworn

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statement by Austin Lin and Bel Liu were never provided and it was directly proven that there intentions were insincere, to say the least. What P&G is indirectly protecting here is the reputation of the company, as the last thing they want is the negative publicity that the “diversion case” would cause in public. Maybe that is the reason why three very high Duracell’s officers were very quietly replaced in November 2010, without any announcement – just a few months ago: Mr. Mark Bertolami, Duracell President, Mr. Duncan Adamson, Duracell VP of Finance and Mr., Rick June, Duracell VP of Marketing. Interestingly enough, it seems that P&G actually learned about the diversion case only after I asked for the additional evidence in this case – in June 2010 – and these “quiet removals” (as there is not a single word anywhere in the press, even on the omnipotent Google search, about the “deserved retiring of hard contributors to the business etc”) happened just four months later. Coincidence? Maybe, it is possible, or maybe not.

Similarly, the retiring of Lynne Burnett happened abruptly as of January 1, 2010 – just a month after the lawsuit by me was filed in the Court. Coincidence? Maybe, it is possible; or maybe not. Enough said.

57. At the end I would like to ask Your Honor for a favor: Please let me prove to the arrogant and self-assured Defendants that **“A lie told often enough (regardless of the number of people who repeat it) remains exactly what it is: Just a plain lie.”** Thank you very much.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated this 25th day of May 2011, at Fairfield, CT

L/S

Predrag Cicvara

Exhibits to Cicvara affidavit:

- A) A Letter about the stock options from Peggy Wilczewski – June 16, 2009**
- B) Notice of raise in salary.**
- C) E-mail from Andrew Yau to Eric Lawson**
- D) Part 1 of diversion (in Cicvara Dep. Exhibit B)**
- E) Part 2 of diversion (in Cicvara Dep. Exhibit C)**
- F) E-mail from Rob DaPra (in Cicvara Dep. Exhibit D).**
- G) T-mobile bill for June 2009 – Bates pages 000415 and 00416 + Bates Page 000612 +
Exact Explanation Table**
- H) Dina Schmude e-mail about Austin reporting my harassment**
- I) Letter to Duracell's lawyer – from Michael Skiber – July 9, 2009**
- J) USB Memory Stick with the following files in the electronic form:**
 - a. P&GBusinessConductManualWBCMREDUCED_Single_Page.pdf
 - b. 1971_SOP_plan_10_2004_Gillette_Stock_Plan.pdf
 - c. Letter to Hong Kong – 10 minutes on Monday.doc
 - d. **Page 000526 – audio file:**
 - e. **Page 000527 – audio file:**
 - f. Entire Deposition by Plaintiff – December 21, 2010 – 200 pages
- K) E-mail to Peggy Wilczewski – June 29, 2009 and her answer June 30, 2009.**
- L) "Hand written official notes from June 15, 2009" provided only on February 7th,
2011.**

A-762

**EXHIBIT G TO CICVARA AFFIDAVIT -
T-MOBILE BILL, DATED JULY 9, 2009
(REPRODUCED HEREIN AT A-716-A-717)**



Restricted Data

Salary Increase Notification
*for***PREDRAG CICVARA**

We are pleased to inform you that effective
Jun 1, 2009
you will receive an annual salary increase of
2,000

New Base Annual Amount:	152,116
Previous Annual Amount:	150,116
New Base Increase:	2,000
Percentage Increase:	1.33%
Increase Interval:	14
Currency:	USD
Pay Frequency:	12

To determine your gross monthly salary increase, you should divide the annual gross salary amount by the number of salary months in a year in your home country, including any bonus months. The amounts shown are based on a 100% work schedule. Some bonus payments are not guaranteed payments and will depend on such things as company performance and your employment status. Please speak to your HR manager if you need clarification.

A-764

**EXHIBIT A TO CICVARA AFFIDAVIT -
LETTER FROM PEGGY WILCZEWSKI TO PREDRAG CICVARA, DATED JUNE 16, 2009
(REPRODUCED HEREIN AT PP. A-295–A-297)**

**EXHIBIT C TO CICVARA AFFIDAVIT -
EMAILS BETWEEN ANDREW YAU AND ERIK LAWSON,
SENT JUNE 16, 2009 TO JUNE 25, 2009
(REPRODUCED HEREIN AT A-330–A-333)**

FACTS PUT IN A CHRONOLOGICAL ORDER

1. The first time a possibility to switch USA AA and AAA cells in Korea with DCL cells was mentioned (I proposed it to - I really do not recall to whom - in Spring or Summer 2005 - in an e-mail - and copied Mani - who accidentally was in Asia at the business trip) - I was severely reprimanded - basically told to NEVER go above Mani's head without talking to him first.
2. Second time I have analyzed it, was after my business trip to Korea and Taiwan in May 2006 (I had a discussion with E.D. Hong - who basically proposed the same telling me that he already talked with majority of companies and that, if we price the product from DCL correctly - we were talking about 1 cent lower price - majority will actually switch to DCLK product). In the analysis I have shown that the margin is going to be increased by \$700K. Not only that the effort was NOT made then to make the switch - my future trips to HK and Asia (and to Europe too) were abruptly STOPPED (and the trips were suppose to be a part of my "collection of value added ideas"). BTW in that report it was mentioned that the OVERALL number of ALL cells that Korea is consuming is 17M (and at that time the enormous increase of USA imported cells already has already occurred - in 2006 overall number of just AA cells exceeded 39M cells!!!!). Could the reason for stopping me of my future trips was to immediately CUT even the slightest chance to possibly talk about the NUMBER of USA cells imported to Asia (and the reasons why that was happening???)
3. In June 2007 during our Global (WW) Sales meeting I was in the van with Josephine Chiu (who knows EVERYTHING and EVERYBODY in HK battery business) and Wendy Li and Alan Yu (they are covering China territories) - and I asked about the enormous number of AA cells imported from USA - mentioning Wah Tat company too. To my big surprise, not one out of these three (and obviously the biggest surprise to me was the fact that Josephine did not know it too) new or EVER heard about the Wah Tat company - and not one of these three new about the enormity of AA import from USA either. Unfortunately I left it at that - and the main reason for even asking this was actually to try to save us money in FY07-08 (by cutting all unnecessary costs) - one of the initiatives I started in May 2007. But now looking back at that fact - maybe the bell should have started ringing right there?
4. Edwin does not have the direct responsibility for any account in HK EXCEPT this one - Wah Tat. That is the fact.
5. At the beginning of our business with Wah Tat there was no SPR created whatsoever. We have started to sell AA (**ALL from USA FROM the very FIRST DAY!!!!!!!**) - even before it was mentioned as a business opportunity in

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Edwin's weekly report. The copies of delivery reports and the first report were given to Nitin. The pricing of 9 cents even, begs (at least) three questions:

- Why would we give such a preferential pricing (BELOW the DC costs – that were \$0.0905 until June 2006 and \$0.105 as of July 2006 until June 2007) to the company that is NOT strategically important at all??
 - Why USA CT was important for the remote controllers that we all know could as well run satisfactorily on zinc carbon batteries – therefore 5% better performance of US CT could NOT be a factor at all.
 - Why there was absolutely no word about “such a big and important business opportunity – no special HIGH volumes bidding – involved (where the approval is asked from financial and supply chain people too) – if this was a customer important enough that we had to give them a price BELOW the costs!!!
6. In the first few reports the columns that showed the product origin were hidden!
 7. The HK administrator Yoko Co went to maternity leave somewhere in February 2006. At that time the replacement was hired for her – and PROMPTLY fired almost immediately (maybe few days) – with the comments that she is “destroying OEM business”. After that NO reports (weekly delivery or monthly Top 50) were sent to Bethel until Yoko came back from the maternity leave (May 2007). Could it be that the replacement was smart and realized that while in the weekly delivery report the FE Global shipment were marked as an USA product (which it had to be – since that document is obviously used as an order placement and shipping preparation database) at the same time in the monthly delivery report this company and cells were presented as DCL product (with DCL costs and a POSITIVE margin). BTW Mani was at the business trip in HK around that time too.
 8. After her return from the maternity leave Yoko Co was promoted to a supervisor (supposedly, because of her very hard work) and first got an administrator (Kenix Hui) – to help her with the delivery reports and orders, and after that she was also put in charge of the person (although only a temporary addition – but still a full time worker) – who is providing forecasts to USA and to DCL. That created a big friction in HK because hard working sales persons (especially Josephine) were not pleased with such developments (and Josephine would actually comment these things during our San Diego meeting too). The question here is “why” there was such a big need to get not one but basically two people to do the same job that Yoko was doing before alone?
 9. In a meantime there was always a lots of noise here, and some sales people were given really hard time here in USA, with a constant pounding of possibilities of product diversion (from USA) and “we do not know what is really happening on a PPD side of the USA business” served ideas. Let's not forget that 90% of our

business is GENERATED in Asia – and that really the biggest threats of diversions are actually coming from there (not from USA).

10. In September 2006 – prompted by something (I really do not know what) Mani decided that the Asian business must be covered by SPRs. That is how the first SPR that I have ever seen for Wah Tat – was generated (Edwin was listed on it as a sales person in charge) – and that is where the CHINA cost was used and China cells were listed as cells used for that particular customer. An error?? Possible. But then, why I was told by Mani in May 2007 – when I asked why are we selling USA cells to Wah Tat? - : “Edwin never told me he switched to USA product!” – and yet THERE WAS NO SWITCH whatsoever – from the day 1 the product sold to FE –Global and later to Wah Tat was of USA manufacturing origin!! Could it be that the SPR was generated just to have a cover in case somebody is asking about this in the future?? A copy of that SPR I gave to Nitin too – do not know does the original still exist or not?
11. All that time (until very recently) the weekly delivery file submitted by Yoko Co – was so called “running file” where the file is changed on the fly – as the business go on – and re-submitted always under the same name “Delivery.xls”). Windows would not allow two files under the same name be opened or stored in the same directory. However I filed these files under weeks and months – so I do have copies “frozen” in times – and that was THE ONLY POSSIBLE WAY to prove that the product shipped from the day 1 was actually USA product – because it was clearly stated on the weekly delivery file!!! Yoko couldn’t foresee what and how am I filing this files – so in her (and quite possibly some other) people mind everything was clean – because an SPR shows Chinese product and the only other officially submitted document – Top 50 report – also showed the same Chinese product – so a margin was positive and there was absolutely NO REASON to worry for anybody who would see these documents – that is UNTIL it is uncovered what is really going on – in which case these documents could become self-incriminatory ones (an SPR from September 2006 might have been destroyed lately??).
12. The moment Nitin brought up the question of possible diversion from HK to Latin America – weekly reports (as of December 2007) STOPPED to have USA mark close to Wah Tat – instead it was only a star sign. Coincidence – possible. But it could be just prevention too – do not risk that possibly, people who are receiving this report could see that USA sign and maybe somehow make a connection??? Again, nobody on that side – and even here could not have known that Nitin will ever come in the possession of knowledge about what was actually stated in the weekly reports per se (and only those are revealing the real truth).
13. Mani and Ana took vacation days (from December 19th 2007) for the rest of the year. Even though both of them are technically OUT of this group activities, the drawer that contains all SPRs is locked (for the first time that I can recall it was

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ever done – since I am in this group). Why??? Even the normal activities needed every day in this group would be prevented because of such an act. Could it be a prevention of possible “sniffing” into the other data there, because some uncomfortable questions Mani have been facing lately could have come ONLY with the knowledge of what was being on the SPRs – so let’s lock it while we are not here?

**FIRST PART – IMPORTANT TO REMEMBER – FEW THINGS NOT DISCLOSED
YET – and the SECOND PART (The most of it)**

1. Hong Kong finance does not have ability to pin-point individual account financials. I was told this is the case by the financial person in the OEM Sales Group.
2. In January 2003 (or 2004) – when our costs went down – what were the ONLY 2 companies to receive an IMMEDIATE DISCOUNT and lower price (December versus January comparisons) – Dynax and Fibrotec.
3. If you look at the weekly delivery HK report itself -- there is a stress on the USA cells there – to the point that it was mathematically precisely calculated EACH week – where the number is. WHY? (because “both sides” needed to know how big a monthly payout should be).
4. Yet – in spite of the mathematically extremely precise accounting for USA cells (and a different color on the reports) – the claims from Mani and Edwin were:
 - That USA cells started to be shipped to both Wah Tat and Fibrotec ONLY somewhere between September 2006 and May 2007 (“because Edwin did not inform Mani of the switch”). This in spite the fact that USA cells were shipped to both years before that.
 - In November 2007, Mani (and Edwin – since supposedly he was asked to provide help too) COULDN'T remember AT ALL that there is only ONE company that could possibly divert a large amount of USA AA cells to Latin America (from Hong Kong) – WAH TAT. Why both of them couldn't remember? – if they knew very well who was the company?
5. FE Global was presented as a NEW BUSINESS win. Incidentally Dynax was NOT announced as a business loss at that time. Why? Because they thought that would be the most convenient way to hide how long the business existed with Dynax-FE Global. Dynax, was officially buried (so all the traces to the USA cells business there were to be “forever forgotten”) – and “new” business started.
6. Incidentally – when FE-Global started to take a lot USA AA cells – at about the same time one could see that Fibrotec focused on the AAA USA cells only (and before that it was AAA and AA – both). It is almost as if these two companies were governed with the same man (since they are both extremely MINUTE and small companies – it is quite possible).
7. It appears that the switch from FE-Global to Wah Tat was done solely for the convenience of us shipping DIRECTLY to the re-packaging company – so that the shipments to Latin America are easier done – and the cost of shipping from FE Global to Wah Tat was PAID for by P&G (Duracell) – to minimize the costs for the Buyer and just increase the red numbers on our already eroded margins!
8. So, if we assume that 1 cent that was bellow the costs was given back, and then ONLY one cent for the convenience of closing eyes on the diverting – it is 2 cents per cell of paybacks. The low of big numbers comes to play here – 2 cents times say about 70 millions in the last two years is about \$1.4 million dollars – MOST probably in cash – since that is the HARDEST way to uncover an illegal

operation and the HARDEST one to prove too. This immediately places a big problem on the receiving end, which is how to distribute this money properly among the involved ones (since one is in USA, one is in Hong Kong and the third one is in – not counting small fish in Hong Kong – which probably got the small money too).

9. To accommodate for the necessary moves to be able to distribute (and launder) the money, numerous trips of certain personnel were required. The trips were mostly between HK and USA and vice-versa, depending on who would travel where and for what reasons. But, as required, they happened also between HK and Europe and vice-versa, and then between Europe and USA too, and sometimes vice-versa. The most important thing is – they all required physical connections.
10. To make these trips “necessary” reasons for them should exist. So, the number of USA Sales meetings increased to about three per year, plus the Yearly sales meeting, plus the CE Show and some other shows (CEBIT – Asian CES etc.) as well, plus the “meetings to discuss strategic direction of our group etc. All these meetings had one thing in common – necessity that certain people always attend them IN PERSON. Again on top of these trips, there were USA visits to Asia – for one reason or another – but WHAT really can prove the point here is the fact that even when the travelling was solely for the Japan (new rechargeable cells) needs – the way was found to either go to HK or to get the other to come to Japan. WHY?
11. Talk about January 16, 2008 teleconference with HK – and what was said.
12. Mike Dixon’s appointment to lead USA sales personnel did not make much sense at all – because of geographical reasons and the fact that Pat Deen should have been a logical person for such a position (but he was constantly referred to as a “stupid” Pat Deen etc.). The good reason though was – it would give him numerous excuses to be able to come to USA as needed – many times per year.
13. The appointment to lead the NA sales with Mike Dixon came about (the preparation for the move) – by my judgment – in May-June 2007 timeframe. Just about time when the first “unexpected blow” came upon the “GRAND plan” – which was the fact that a supply chain planning group COMPLAINED about the unexpectedly HIGH USA AAA and AA cells for ASIA. One thing has nothing to do with the other – but it looks a bit as a divine intervention – because blows starting to happen one after another from this point on. Or, maybe it was not a divine intervention, but something much more to the earth - the GREED became too big – and the volumes were too carelessly increased because the business was booming for everybody involved (and our margin was quickly shrinking as well). And about that time the house addition started – and could not be stopped – so the selling continued even though it appeared risky – and everything went quite well until November, 2007 and the diverting story.
14. The second blow (end of November 2007) - was the fact that the link was established between the diverted cells in Latin America and Hong Kong – something that planners of the “GRAND plan” did not counted on – because as grand as it was it became much more vulnerable the moment this link was discovered. And it was. The quick patch was tried – a second SPR for Wah Tat – also with the Chinese cells (in order to put it through quickly) – and to present

that the biggest consumer of USA AA is actually using Chinese cells – to hide the FACTS. At this point – the “we do not know” behavior became the mantra (and was supported by providing Nitin with the Top 20 report – that shows Wah Tat as a company which is BUYING Chinese AA cells. WHY?????)

15. The third and final blow to the plan came with the fact that weekly delivery reports were “frozen in time” for every week in the last 6 years – which established very STRONG and UNDENIABLE proof that the shipments to Wah Tat (Dynax, FE Global) and Fibrotec were made for years before the May 2007.
16. How to prove this? I will stop my writing here – this can be talked over if there is a desire in the company – if not I believe there are some other options for truth to come up at the end.

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Predrag Cicvara
 Duracell Global OEM Sales Group
 The Procter & Gamble Company
 Phone: 203-796-4252 Fax: 513-386-2021
 cicvara.p@pg.com

From: DaPra, Rob
Sent: Friday, January 04, 2008 11:35 AM
To: Cicvara, Predrag
Cc: Wilczewski, Peggy
Subject: SUMMARY OF RECENT DISCUSSIONS

Predrag,

I am writing this note to you as a record of our recent discussions and a summary of my understanding of the situation which you have brought to my and others attention over the past month (inclusive of the recent holiday period). This note is written in a very fact based approach so please do not assume there is any particular points of view being put forth by myself. I want to be consistent with our conversations over the past month and focus at this stage only on the facts.

- > It is my understanding that you have alleged that Mani Parmar and Edwin Ko have conspired to intentionally divert product by arranging for the sale of product to a customer(s) at a favorable price point(s) which would facilitate such customer(s) to resell such product into channels which such product was not intended for.
- > You have alleged that such actions have been intentional and that Mani and Edwin behaved in such a way to prevent others from uncovering their alleged actions
- > You have alleged that Mani has intentionally destroyed P&G materials which relate to the matter at hand
- > You have assembled data, which you have provided on separate occasions to Nitin Batra and myself; it is your contention that such data supports your allegations against Mani and Edwin
- > You have communicated your beliefs, allegations and the basis of those allegations in a number of ways over the course of the past month:
 - >> To me verbally on several occasions
 - >> To me, Nitin Batra, Lynn Mephram and Mark Bertolami in writing via email on multiple occasions
 - >> Provided me a written summary (not in electronic form) of your allegations and the basis of such
- > In our last conversation on Wednesday January 2 I directed you to cease spending any time on this matter. I asked you if you understood this direction and you confirmed that it was clear and that you would no longer spend any time acting on your beliefs or thinking (to the extent possible) about the matter.
- > My direction to you was based on the following:
 - >> Appropriate P&G personnel will handle this matter
 - >> Appropriate P&G personnel will determine when and how the matter is dealt with
 - >> Appropriate P&G personnel will be responsible for making any final determination with respect to this matter
 - >> It is not your role to conduct investigations nor are you experienced in investigating such matters at P&G
 - >> Given your position within the department you may not be perceived as being independent with respect to this matter and you should not be involved in any further investigation (in fact I had requested several weeks ago that you cease spending time on this matter)
 - >> Your role and the best use of your time at this point is to drive value in our current OEM business by looking at future opportunities
- > I did not communicate to you during our discussions nor am I doing so here, who the appropriate P&G personnel are that will be managing this matter; it is important that you trust your supervisor to make the appropriate decisions. All documents you have given to me and Nitin are in the hands of the P&G legal

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group.

- > If at any time you feel that the matter is not being properly dealt with you can contact either HR here in Bethel or the P&G personnel at the 800# provided on the internet to report such matters. You indicated to me that you understood this, that in discussions with your family that you have considered (although concluded not necessary at this time) to retain your own counsel with respect to this matter.
- > You have confirmed to me that you have provided 100% of the materials / data which you have collected which forms the basis of your conclusions; that you have no other data in your possession other than what may / may not be stored on your computer
- > You have indicated that your computer is soon to be replaced and that you have requested that this replacement not take place. The reason you stated was your concern that the IT department may "lose" a portion of the data stored on the computer during the transfer. You stated that this concern is based on your understanding of potential "relationships" between people in IT with certain persons who may have a connection to this matter and who might wish, in your judgment, that such data be destroyed. In our discussion I agreed with your request.

At this point I am communicating that this matter will be addressed by the appropriate P & G personnel and you should no longer be involved . Your allegations are serious and P&G will take actions which are deemed appropriate in the situation. If anything in this note is incorrect please let me know.

Regards,

Rob

Vice President Strategic Planning, Business Development and Alliances
Duracell Global Business Management Group
Phone - 203-796-4362
Fax - 866-734-7906

A-774

A-775

Case 3:09-cv-02054-JCH Document 89-10 Filed 05/31/11 Page 1 of 2

From: Schmade, Dina
 Sent: Wednesday, June 10, 2009 11:52 AM
 To: bell@practical.com.hk
 Cc: Wilczewski, Peggy
 Subject: RE: Austin Lin - follow up to conversaton

Attachments: image001.gif



Image001.gif (5 KB)

Bel,

Tomorrow at 19:30 your time is perfect. Peggy and I will call you then.

Regards,

Dina

From: Bel [mailto:bell@practical.com.hk]
 Sent: Wednesday, June 10, 2009 10:52 AM
 To: Schmade, Dina; Bel
 Cc: Wilczewski, Peggy
 Subject: Re: Austin Lin - follow up to conversaton

Dear Dina,

Thanks for your prompt response.

As I just returned to HK today, I will only be available to talk at 07:30 your time tomorrow/ 19:30 my time tomorrow. You may call me at (852) 9673 7194.

Regards,

Bel

Sent via BlackBerry® from 3

From: "Schmade, Dina"
 Date: Tue, 9 Jun 2009 13:11:39 -0400
 To: <bell@practical.com.hk>
 Subject: Austin Lin - follow up to conversaton

Bel,

Case 3:09-cv-02054-JCH Document 89-10 Filed 05/31/11 Page 2 of 2

Austin Lin contacted me today to let me know that you shared with him a concern that how one of our employees, Predrag Cicvara, made unwelcome advances to you. I want to reassure you that both myself and my manager, Peggy Wilczewski, take your complaint very seriously and are fully committed to investigate this matter.

I realize there is a significant time difference between here and Hong Kong so we would like to find out when you can be available for a phone call. We would like to ask questions about the situation with Predrag so we can better understand what has taken place.

Please let us know the phone number to use to contact you and what time of day is the best to reach you. Once you send that, we will set up a time to speak with you.

Again, let me reassure you that we take these complaints very seriously and will make this investigation a top priority.

Regards,

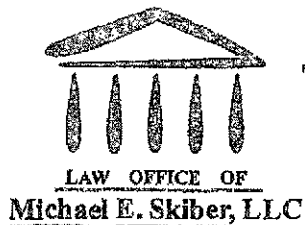
Dina Schmude

Human Resources Manager

203-796-4080

866-488-1862 Fax

Case 3:09-cv-02054-JCH Document 89-11 Filed 05/31/11 Page 1 of 2



THE LAW OFFICE OF MICHAEL E. SKIBER, LLC**
135 ELM STREET, BRIDGEPORT, CT 06604

**LICENSED IN CONNECTICUT AND NEW YORK.

July 9, 2009

Sent Via Facsimile (203)796-4518 and Registered Mail Return Receipt Requested

Procter & Gamble
Corporate Counsel Duncan Sparkes,
14 Research Dr
Bethel, CT 06801-1000

Re: Predrag Cicvara

Dear Mr. Sparkes:

Please be advised that this office represents Mr. Predrag Cicvara in legal claims against the Procter & Gamble Company and/or Duracell.

As you probably are aware, Mr. Cicvara was a hard-working and valuable employee of both Gillette and Procter & Gamble for nearly a decade. During his dedicated service, Mr. Cicvara earned substantial stock option compensation. Regrettably, it is our understanding that P&G intends to snatch away Mr. Cicvara's options without proper legal authority. Accordingly,

DEMAND IS HEREBY MADE FOR PROCTER AND GAMBLE TO IMMEDIATELY HONOR MR. CICVARA'S EXERCISE OF HIS VESTED STOCK OPTIONS PURSUANT TO THE JULY 3, 2009 REQUEST TO EXERCISE.

Should you choose to ignore our demand, this office is prepared to immediately assert Mr. Cicvara's rights and seek any and all legal and equitable remedies available in the appropriate jurisdiction.

In anticipation of court action, we request you preserve any tangible and intangible evidence related to Mr. Cicvara's employment, including but not limited to: emails, computer records, phone logs, blackberry messages, tape recordings, written correspondence, and personnel files. Do not contact Mr. Cicvara regarding this matter. Any correspondence concerning this matter must be directed to this office only. I look forward to your anticipated cooperation in reaching a mutually agreeable resolution in this matter.

Very Truly Yours,



Michael E. Skiber, Esq.

cc: Predrag Cicvara

A-778

Dear Mr. Sparkes:

Case 3:09-cv-02054-JCH Document 89-11 Filed 05/31/11 Page 2 of 2

Please be advised that this office represents Mr. Predrag Cicvara in legal claims against the Procter & Gamble Company and/or Duracell.

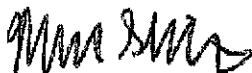
As you probably are aware, Mr. Cicvara was a hard-working and valuable employee of both Gillette and Procter & Gamble for nearly a decade. During his dedicated service, Mr. Cicvara earned substantial stock option compensation. Regrettably, it is our understanding that P&G intends to snatch away Mr. Cicvara's options without proper legal authority. Accordingly,

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Very Truly Yours,



Michael E. Skiber, Esq.

cc: Predrag Cicvara

CONNECTICUT: (203) 615-0090
NEW YORK: (917) 670-5800

EMAIL: SKIBERLAW@GMAIL.COM
FACSIMILE: (203) 335-0607

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TRANSMISSION VERIFICATION REPORT

A-779

**EXHIBIT J TO CICVARA AFFIDAVIT -
(A) PROCTOR & GAMBLE — WORLD WIDE BUSINESS CONDUCT MANUAL
(REPRODUCED HEREIN AT PP. A-426–A-489)**

**EXHIBIT J TO CICVARA AFFIDAVIT -
(B) THE GILLETTE COMPANY, 1971 STOCK OPTION PLAN, DATED DECEMBER 13, 2005
(REPRODUCED HEREIN AT PP. A-323–A-327)**

**EXHIBIT J TO CICVARA AFFIDAVIT -
(C) LETTER FROM PREDRAG CICVARA TO BEL LIU
(REPRODUCED HEREIN AT P. A-491)**

**EXHIBIT J TO CICVARA AFFIDAVIT -
(F) EBT OF PLAINTIFF PREDRAG CICVARA, TAKEN DECEMBER 21, 2010
(REPRODUCED HEREIN AT PP. A-493–A-691)**

**EXHIBIT K TO CICVARA AFFIDAVIT -
EMAIL FROM PREDRAG CICVARA TO PEGGY WILCZEWSKI, SENT JUNE 29, 2009
(REPRODUCED HEREIN AT P. A-425)**

02/07/2011 18:48 FAX 1212 218 5270

SEYFARTH SHAW LLP

017/023

6-15-09

Where have you been the last wk with Mr. Beltrami
Indonesia + Thailand + the

Did you see her for mtgs + other things?

mtgs. Dinner after dinner

After dinner where?

In the bar.

W. have documented - hotels have cameras
emails + phone conversations

I went to her room to discuss things + the
what kinds of things?

Some are a bit personal w/ her + with me.

Did she invite me to her hotel room?

Did she ask you to leave + did you refuse to leave?

Did you touch her in any way?

Yes, I was room for her. She confirmed
certain things w/ me that I'd rather
not discuss here.

I did not have many business discussions
in her hotel room. She confirmed to me
that she knows of somebody in the life.

Did you take off your clothes in the
hotel room? No.

02/07/2011 18:52 FAX 1212 218 5270

SEYFARIE SHAW LLP

02/018/023

Have you sent an email to her
for her you dirty old man?

She was at some pt. misunderstanding
my intention

Did you tell her that you wanted to
rape her?

Look it was in a hotel & she was dressed in
a way. I told her I had a feeling I
could rape her but I never had them
my mind I didn't think she'd think
about it seriously.

What did you do or say to make her
uncomfortable?

I asked if I could come to her room &
she was dressed in very short shorts.
I'm not a doctor but I could rape
you. I told her you are showing off.

I had a feeling of Bill that was very
warm to her on the confined certain
things to me. I had the feeling I had
to protect her from the team. She could be
in harm's way by her boyfriend.

I wanted to help her about what
I came to her room to talk to her.

She said I'm your friend I should be honest

CONFIDENTIAL

PG 000845

A-782

02/07/2011 18:58 FAX 1212 218 5270

SEYFAKH SHAW LLP

019/023

she felt pain. She talked about the
 guy who left
 I said I could rape you because
 she was showing off.
 She said please can you go - I left the room.
 I didn't want to harm her.

LB: When you were in her hotel room - was she
 afraid of you - she called her room.
 When she asked me to leave, I left

never touched her, never chased her
 never took your clothes off.

Did you ever come to her room
 when she did not want you? NO

Was she sick in bed when you went there?

She never told me she was sick

Where did this take place?

In Bangladesh -
 Empress Route

We were in the restaurant of Wally's bar
 (Lami, P.C., Mr. Andrew Bar.)

A-784

02/07/2011 19:04 FAX 1212 218 5270

SEYFARTH SHAW LLP

020/023

I was stroking her head - tried to
get her head free (pt. to his chest).

After we ate dinner, I left.

How many nights did you go to her
hotel room? That was the night.

How many days were you together?

Indonesia Singapore (one night)

Wed. 7 8 9 10

(for 6 days)

Did you attend her training? 1/22
Do you understand me comp. Peter? Yes

Do you realize you were a comp rep &
there is one of our suppliers?

I think what I did was not
inappropriate.

Do you think the others you said you wife would find
appropriate? probably not.

My wife might think I did something
inappropriate. She would like me to
find for other women.

CONFIDENTIAL

PG 000647

02/07/2011 10:10 FAX 1212 216 5270

SEYFARTH SHAW LLP

021/023

What do you feel for Bel?

I have very warm feelings for Bel.
I feel she is probably in not too
good of a relation with her husband.
She married a doctor & hell no that
she was married.

How old is Bel?

30 I think

How old are you? 54

Is she an attractive woman?

She's a good looking woman. I don't know if
she is attractive. This doesn't have anything
to do with attractiveness. This kind of relationship
didn't happen in ?

I'm not saying it's appropriate. She said
things about her. So was more than a normal
relationship that is in a human relationship.

KB → If the recorder recording that you were being
asked to leave a room
you didn't, how do you explain that?
I left the room. Why is there a
recording?

A-787

02/07/2011 19:17 FAX 1212 215 5270

SEYFARTH SHAW LLP

022/023

I left her room w/ out harassing her.

She apologized to me & I didn't understand why. She m^{is}took when she did it. Come 2nd day of audit, she apologized & said she was sorry for what she did. Now I understand why. Oh my God.

Why dⁱd you put her who she had told?
I tried to understand why she was apologizing. I asked her who she told because I couldn't sleep. I even sent her one SMS message asking why she was apologizing. She said you'll understand one day.

Do you believe that law is illegal & the comp. - you can be sued for harassing behavior? I didn't want to harass anybody.

Anything else that you'd like to tell me?

I don't think it's a mistake that I'm saying if I did to have the company I did not mean to hurt anybody. She apologized to

me. I feel that to a point I was provoked - I shouldn't be saying this - if I was thinking of things the way it turned out I should not have been sending her the way. It didn't come from me. I believe it came close in the sense I was the person who wanted to confirm it. It was a work relationship between us. I'm trying to explain why maybe at some pt. it became personal. When she told me to leave her room, I left her room. There was nothing between us.

Violation of P.O.P.

- engaging in bad behavior
- violated camp policy & P.O.P.
- have supplies

Prichard told Lynne that she
had destroyed his life.

Case 3:09-cv-02054-JCH Document 94 Filed 06/16/11 Page 1 of 14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----- X		
PREDRAG CICVARA,	:	Civil Action No. 3:09-cv-2054
	:	(JCH) (HF)
Plaintiff,	:	
	:	
v.	:	June 16, 2011
	:	
THE GILLETTE COMPANY and PROCTER &	:	
GAMBLE COMPANY and DURACELL, AN ENTITY	:	
OF UNKNOWN FORM and LYNNE BURNETT,	:	
	:	
Defendants.	:	
----- X		

**DEFENDANTS' REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Edward Cerasia II (ct 13096)
Hema Chatlani (phv 04023)
SEYFARTH SHAW LLP
620 Eighth Avenue, 32nd Floor
New York, New York 10018-1405
(212) 218-5500

Attorneys for Defendants
The Gillette Company
and The Procter & Gamble Company

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RULE

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I. PRELIMINARY STATEMENT

Defendants The Gillette Company and The Procter & Gamble Company (collectively, the “Company”) respectfully submit this reply memorandum in further support of their motion for summary judgment seeking dismissal of Cicvara’s remaining claims in the Amended Complaint.¹

In response to the Company’s summary judgment motion, Cicvara has voluntarily withdrawn his claims in Counts Two through Seven of his Amended Complaint, but has held on to his cause of action in Count One for breach of contract seeking to recover the value of his forfeited stock options. Even so, Cicvara has not presented any evidentiary support for his sole remaining claim. Instead, Cicvara’s opposition papers consist entirely of conclusory allegations, self-serving statements supported solely by his baseless Affidavit, and conspiracy theories and allegations that this Court already ruled are irrelevant to this case. Cicvara’s Affidavit and the remainder of his opposition papers simply ignore that, under Fed. R. Civ. P. 56(e), he must present *admissible* evidence, and not his own conjecture, that the Company breached any agreement with him for stock options. This he has not done.

Astonishingly, despite admitting throughout his deposition testimony and again in his opposition papers that he engaged in sexual misconduct toward Liu that “might be deemed inappropriate,” (Pl.’s Br. at 6), Cicvara now alleges that his behavior was not harmful to the Company and, according to him, did not constitute gross misconduct. His arguments, however, completely ignore the comprehensive and controlling case law cited in the Company’s moving

¹ The abbreviated and capitalized terms used in this reply memorandum are defined in Defendants’ Memorandum Of Law In Support Of Their Motion For Summary Judgment (“Defs.’ Br.”). Plaintiff’s Memorandum Of Law In Opposition To Defendants Motion For Summary Judgment” will be cited herein as “Pl.’s Br.”

brief showing that the Company, and not Cicvara, had *sole discretion* to determine whether his actions constituted “gross misconduct which [was] materially and demonstrably injurious to the Company or the subsidiary.” (Defs.’ Br. at 11-12.) Further, Cicvara conveniently overlooks his role as a representative of the Company when traveling abroad; stripping down to his underwear and sitting on the bed of a supplier’s female employee while mentioning the word “rape” is simply not the type of representation the Company contemplated. As the Company’s moving papers make clear, Cicvara’s atrocious conduct negatively affected its reputation, strained its relationship with Practical Lighting, and disturbed Liu, who complained about his conduct. The Company was well within its discretion in determining that Cicvara’s behavior constituted gross misconduct that was materially and demonstrably injurious to the Company, resulting in an automatic forfeiture of his stock options under the terms and conditions of the Plan. Because no reasonable jury could conclude otherwise, the Company respectfully requests that the Court grant its motion for summary judgment and dismiss Cicvara’s Amended Complaint in its entirety.

II. ARGUMENT

A. **THE SPECULATIVE ASSERTIONS IN CICVARA’S RULE 56(a)2 STATEMENT AND AFFIDAVIT DO NOT COMPLY WITH L. CIV. RULE 56(a)3 OR THIS COURT’S PREVIOUS ORDER**

The self-serving, conclusory, argumentative, contradictory statements and mere denials contained in Cicvara’s Local Rule 56(a)2 Statement and his Affidavit are insufficient to defeat the Company’s summary judgment motion and should be stricken. *E.g., Goenaga v. March of Dimes Birth Defects Found.*, 51 F.3d 14, 18 (2d Cir. 1995) (a plaintiff cannot defeat summary judgment by ignoring or misstating the record or by relying on “unsupported [factual] assertions . . . conjecture or surmise” or “upon the mere allegations or denials of the adverse party’s pleading”) (citation omitted); *Sellers v. M.C. Floor Crafters, Inc.*, 842 F.2d 639, 643 (2d Cir.

1988) (affidavits must be based on personal knowledge). Cicvara's 56(a)2 Statement and Affidavit are devoid of any citations to admissible evidence, are not based on personal knowledge, and are replete with references to allegations that this Court has repeatedly stated are *irrelevant* to this case, and thus cannot be used to refute the Company's motion for summary judgment.

1. Each of the Statements In The Company's Local Rule 56(a)1 Statement Should Be Deemed Admitted

Local Civil Rule 56(a)3 requires that "[e]ach statement of material fact by . . . an opponent in a Local Rule 56(a)2 Statement, and each denial in an opponent's Local Rule 56(a)2 Statement, must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial." L.R. 56(a)3. The Local Rule cautions that "failure to provide specific citations to evidence in the record as required by this Local Rule may result in the Court deeming certain facts that are supported by the evidence admitted in accordance with Rule 56(a)1." L.R. 56(a)3. Cicvara's lengthy and conclusory Rule 56(a)2 Statement utterly fails to cite to *any* admissible evidence and instead is replete with conclusory, argumentative, and contradictory statements without any citations to the record. (E.g., Pl.'s 56(a)2, ¶¶ 5-8, 14, 15, 23-25, 27, 28, 30, 31, 33-35, 36-40, 42-48, 50, 56-58, 60-64).² As such, the statements in the Company's Rule 56(a)1 Statement, which are aptly supported by citations to the record, should be deemed admitted. E.g., *Farina v. Branford Bd. of Educ.*, 2010 U.S. Dist. LEXIS 99730, at *5 n.3 (D. Conn. Sept. 22, 2010) (this Court held that facts contained in defendant's Local Rule 56(a)1 statement are "deemed admitted" because

² Cicvara does not even bother to admit or deny certain paragraphs, (e.g., Defs.' 56(a)1, ¶¶ 9-13, 16-22, 26, 29, 32, 41, 49 and 65), rendering the statements in these paragraphs admitted, *Eiden v. McCarthy*, 531 F. Supp. 2d 333, 338 (D. Conn. 2008) (deeming admitted any statement which plaintiff failed to admit or deny).

plaintiff's opposing statements contained unsupported denials without "any specific citation to the record."); *Wagner v. Nat'l City Bank*, 2010 U.S. Dist. LEXIS 50789, at *6 n.2 (D. Conn. May 21, 2010) (same); *Nanos v. City of Stamford*, 609 F. Supp. 2d 260, 263 (D. Conn. 2009) (deeming facts admitted where plaintiff's opposition did not cite to admissible evidence and instead "add[ed] commentary or analysis not related to the existence or non-existence of the facts alleged by the City").

2. Cicvara's Self-Serving Affidavit Should Be Stricken Because It Is Not Based On Personal Knowledge

Cicvara desperately seeks to create an issue of fact by submitting a rambling Affidavit, in which he claims that the Company acted "illegally" in terminating him for cause, (Pl.'s Aff., ¶ 18), and that nearly every person he worked with conspired to terminate his employment, remarkably all for different reasons, (*id.*, ¶¶ 28-38). These far-fetched allegations make sweeping accusations against several employees and conclusions about matters which Cicvara does not have any personal knowledge. For example, Cicvara speculates that Lin informed the Company's Human Resources division about Liu's complaint because Lin wanted to hide alleged fraudulent business expense reports, (*id.*, ¶ 29), Yau falsified the incident with Liu in an attempt to "gain a strong leverage" with the Company, (*id.*, ¶¶ 31, 32), a mysterious "person who must have been at the Duracell top position or very close to it" wanted to "get rid" of Cicvara to "destroy" evidence and avoid "negative publicity" of alleged wrongdoings within the Company that Cicvara supposedly uncovered, (*id.*, ¶¶ 28-38, 56), and the Company supposedly "learned" about this alleged wrongdoing in June 2010, when Cicvara asked for discovery in this case, and thereafter "very quietly replaced" three of its executives, (*id.*, ¶ 56). These completely preposterous allegations must be stricken because they are not based on any personal knowledge or evidentiary support, and are wholly insufficient to withstand summary judgment. *E.g.*,

Betancourt v. Slavin, 676 F. Supp. 2d 71, 80 (D. Conn. 2009) (“A self-serving affidavit which reiterates the conclusory allegations of the complaint in affidavit form, unsupported by any contemporaneous records, is insufficient to preclude summary judgment.”); *McNally v. Stewart*, 618 F. Supp. 2d 168, 174 (D. Conn. 2009) (this Court “disregard[ed] bald assertions” in plaintiff’s affidavit “because such statements ‘lack sufficient foundation to permit its use to defeat a properly supported motion for summary judgment’”) (quoting *Rossi v. W. Haven Bd. of Educ.*, 359 F. Supp. 2d 178, 182 (D. Conn. 2005)).

3. This Court Should Strike the Allegations in Cicvara’s Moving Papers That Refer to Matters Which This Court Has Already Ruled To Be Irrelevant

On June 16, 2010, Cicvara filed a motion to compel discovery seeking documents related to Company employees who had no involvement in the decision to terminate his employment or the cancellation of his stock options. (Docket Entry No. 39.) The motion sought, among other things, documents concerning an alleged affair between two Company employees, Mani Parmar and Ann Cardinale, documents regarding an alleged “illegal” diversion of Duracell batteries from Hong Kong to Latin America, and documents concerning Lin’s expense reports. On July 20, 2010, this Court denied Cicvara’s motion to compel and held that these matters were wholly irrelevant to his claims. Notwithstanding that ruling, Cicvara filed a second motion to compel on February 25, 2011, (Docket Entry No. 68), once more seeking discovery of these matters. On April 6, 2011, this Court again held that Cicvara was not entitled to this discovery. (Docket Entry No. 73.)

Despite the Court’s rulings, Cicvara once more refers to these irrelevant allegations throughout his Rule 56(a)2 statement, again speculating that his termination was motivated by his unsubstantiated conspiracy theories. (*See, e.g.*, Pl.’s 56(a)2, ¶¶ 14, 25, 27, 36, 50, 56, 57, 58, 60, 61; Pl.’s Aff., ¶¶ 29, 33, 39, 54, 56.) This Court should strike these unsubstantiated

allegations because they are wholly inappropriate, irrelevant, and completely ignore the Court's previous Orders.

B. CICVARA FAILS TO PRESENT ANY EVIDENCE DEMONSTRATING THAT HE IS OWED THE VALUE OF HIS STOCK OPTIONS

Even affording Cicvara all the inferences granted in favor of the non-moving party on a motion for summary judgment, he still failed to present any evidence of a breach of contract. The undisputed evidence before this Court demonstrates that Cicvara engaged in admittedly inappropriate sexual behavior toward Liu, resulting in his termination for cause and the automatic forfeiture of his stock options pursuant to Section 6(f) of the Plan. (Defs.' Br. 9-14.)

1. The Clear And Unambiguous Terms Of The Plan Provide That An Employee's "For Cause" Termination Results In The Automatic Forfeiture Of His Stock Options

Cicvara admits in his opposition papers that the Plan's language is "clear and unambiguous," yet contends, without any citation to relevant case law, that the Company breached the terms and conditions of the Plan. (Pl.'s Br. at 3.) Cicvara's argument is belied by the undisputed evidence presented by the Company. Pursuant to the clear and unambiguous terms of the Plan, "[i]f an employee Participant is discharged for Cause . . . all his options shall *immediately* be cancelled effective as of the date of termination of his employment." (Defs.' 56(a)1, ¶ 50.) (emphasis added). Section 6(f)(B) of the Plan specifically defines "Cause" as "the Participant's engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary." (*Id.*)³

³ As a last-ditch effort to preserve his breach of contract claim, Cicvara argues that the Company terminated his employment pursuant to Section 6(f)(A) of the Plan and not Section 6(f)(B). (Pl.'s Br. at 5-6.) However, the Company has consistently informed Cicvara that he was terminated because of his behavior toward Liu, and not because of poor performance. (See Defs.' 56(a)1, ¶ 48.) Although Cicvara correctly points to a typographical error on Peggy

The evidence presented by the Company – and undisputed by Cicvara – makes clear that Cicvara was terminated for cause under the terms of the Plan, resulting in the automatic forfeiture of his stock options and precluding any claim for a breach of contract. At most, Cicvara demonstrates only that he disagrees with the Company’s decision to terminate his employment, which he believes was not “proper.” (Pl.’s 56(a)2, ¶¶ 61-64.) However, Cicvara ignores the case law cited in the Company’s moving papers showing that the Company was well within its discretion in determining that his *admitted* sexual behavior toward Liu constituted “gross misconduct” under the terms of the Plan. Cicvara cannot ask this Court to reevaluate the Company’s business decision based on his unsubstantiated personal opinion that his sexual conduct toward Liu was not gross misconduct and was not harmful to the Company. *See, e.g., Byrne v. Town of Cromwell Bd. of Educ.*, 243 F.3d 93, 103 (2d Cir. 2001) (“[The court’s] role is . . . not to act as a super personnel department that second guesses employers’ business judgments.”).⁴ Because Cicvara was terminated for cause under the terms of the Plan, his stock options were automatically forfeited, precluding any claim for breach of contract.

2. The Undisputed Evidence Establishes That Cicvara Engaged In Behavior That The Company Reasonably Determined Constituted Gross Misconduct

The record before the Court reveals that the Company had a sufficient and reasonable basis for concluding, after engaging in a thorough investigation of the matter, that Cicvara’s unwanted sexual advances toward Liu constituted gross misconduct. The Company began its

Wilczewski’s June 16, 2009, correspondence to him, (Wilczewski Decl., Ex. H), that error does not transform his termination into one for poor performance under Section 6(f)(A).

⁴ Cicvara cites to *Miller v. Equitable Life Assurance Soc.*, 181 Ill. App. 3d 954 (Ill. App. Ct. 1st Dist. 1989), and *Bowersox v. P.H. Glatfelter Co.*, 677 F. Supp. 307 (M.D. Pa. 1988) in support of his argument that he did not engage in gross misconduct. (Pl.’s Br. at 5.) However, both of these cases discuss the standard for reviewing an intentional infliction of emotional distress claim, and have absolutely no bearing on a Company’s decision to terminate an employee for cause for engaging in sexual harassment.

investigation by interviewing Liu and reviewing her documentation of highly disturbing e-mails and text messages sent by Cicvara. (Defs.' 56(a)1, ¶¶ 32-35.)⁵ Although Cicvara claims that "nobody else from Duracell[] ever contacted Plaintiff to try to get his side of the story," (Pl.'s 56(a)2, ¶¶ 37, 38, 39 & 40), the record reveals otherwise. In truth, the Company did not complete its investigation until after meeting with Cicvara on June 15, 2011, to ascertain his version of the events. (Defs.' 56(a)1, ¶ 44.) During that meeting, Cicvara *corroborated* Liu's allegations by admitting, among other things, that he had touched Liu while in her hotel room and by stating, "Look, it was in a hotel and she was dressed in a way. I told her I had a feeling I would rape her but I never had that in my mind and I didn't thin[k] she'd think about it seriously." (*Id.*, ¶ 45.) After listening to Cicvara admit to visiting Liu's room, touching her, and using the word "rape," Burnett, Wilczewski, and Babis more than reasonably concluded that Cicvara's behavior warranted the termination of his employment for cause. (*Id.*, ¶ 48.)⁶

Cicvara now argues, without any citation to the record or to case law, that his actions did not injure the Company; however, he ignores that he was entrusted with acting as the face of the Company, (Defs.' 56(a)1, ¶ 14), and made inappropriate sexual advances while acting as a Company representative – an egregious act which the Company reasonably viewed as reflecting

⁵ Cicvara claims in his opposition papers that the Company did not produce the text messages reflected in the document identified with Bates number PG000612 prior to filing its motion for summary judgment. (Pl.'s 56(a)2, ¶ 27.) The Company produced that document on December 14, 2010, and in fact referred to the document in its Responses and Objections to Plaintiff's Second Request for Production of Documents. (*See* Pl.'s 56(a)2, Ex. E, at 4.) Cicvara's accusatory statement that the Company "intentionally, never produced" this document because it "is trying to construct the story that could better justify their act of firing Plaintiff for cause," (Pl.'s 56(a)2 ¶ 27), only highlights that his claims are based completely on conjecture and not on a review of the actual evidence.

⁶ Although Cicvara now claims that he never told Liu he had a "feeling [he] would rape her," he nonetheless *admits* that he told her "one could rape you." (Pl.'s 56(a)2 ¶ 30.) Regardless of the semantics, the record evidence is clear that Cicvara admittedly used the word "rape" with Liu – either telling her that he "could rape" her or that he "would rape" her.

negatively on its reputation and impairing its relationship with Practical – in addition to harming an employee of a Company supplier. More importantly, Cicvara ignores the clear case law which establishes that the Company – *and not Cicvara* – had sole discretion to determine whether his behavior constituted “gross misconduct.” (Defs.’ Br. at 13-14.) Cicvara cannot ask this Court to overturn the Company’s business decision absent a showing that the Company acted arbitrarily, capriciously, or in bad faith – a showing which he has not made here. *See Welland v. Citicorp, Inc.*, 2003 U.S. Dist. LEXIS 22721, at *35-36 (S.D.N.Y. Dec. 17, 2003) (holding that company had a reasonable basis for terminating the employee for cause when he violated company policy by accepting gifts from a company vendor, resulting in the forfeiture of his unvested stock options, and the company’s decision should be set aside *only if* the employer’s decision was arbitrary and capricious), *aff’d*, 116 Fed. Appx. 321, 322 (2d Cir. 2004) (summary order); *Noonan v. Staples, Inc.*, 556 F.3d 20, 33-34 (1st Cir. 2009) (explaining that courts are not “super personnel departments” and may perform only a “a limited review” of an employer’s decision that an employee was terminated “for cause” under the terms of a stock option agreement “to determine if it was arbitrary, capricious, or made in bad faith”) (citations and quotations omitted); *Weir v. Anaconda Co.*, 773 F.2d 1073, 1080 (10th Cir. 1985) (although employee’s stock option agreement did not define “for cause,” Tenth Circuit held that the determination that plaintiff’s termination for poor performance was a “for cause” termination was not arbitrary, in bad faith, or fraudulent).

Cicvara’s inability to support his sole remaining claim with any admissible facts demonstrates that the Company did not act arbitrarily, capriciously, or in bad faith in determining that his lewd behavior toward Liu constituted gross misconduct. Therefore, summary judgment is warranted on Count One.

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III. CONCLUSION

For the foregoing reasons, and the reasons set forth in the Company's moving papers, the Court should grant the Company's motion for summary judgment; grant to the Company its attorneys' fees and costs in this case; and grant to the Company such other and further relief as the Court may deem just and proper.

Dated this 16th day of June, 2011, at New York, New York.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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PREDRAG CICVARA,	:
	:
Plaintiff,	:
	:
v.	:
	:
THE GILLETTE COMPANY and PROCTER &	:
GAMBLE COMPANY and DURACELL, AN ENTITY	:
OF UNKNOWN FORM and LYNNE BURNETT,	:
	:
Defendants.	:
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Civil Action No. 3:09-cv-2054
(JCH) (HF)

June 16, 2011

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

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I. PRELIMINARY STATEMENT

Defendants The Gillette Company and The Procter & Gamble Company (collectively, the “Company”) respectfully submit this memorandum in opposition to plaintiff Predrag Cicvara’s (“Cicvara’s”) cross-motion for summary judgment on his first cause of action for breach of contract seeking the value of his forfeited stock options.

Cicvara’s cross-motion for summary judgment should be denied because it is untimely, procedurally defective, and completely meritless. He filed his motion forty-six days after the Court-imposed deadline of April 15, 2011 for filing *all* dispositive motions. Therefore, the Court should deny his motion on this ground alone. In any event, Cicvara’s Local Civil Rule 56(a)1 Statement of Undisputed Material Facts (“56(a)1 Stmt.”), submitted in support of his cross-motion, does not contain even *one* citation to admissible evidence and is replete with unsupported legal conclusions, which also warrants denial of the cross-motion.

In addition to its lateness and procedural infirmities, Cicvara’s cross-motion is completely lacking in merit, as evidenced by his three-page “memorandum,” which is utterly devoid of any case law or legal argument. Cicvara maintains in this memorandum that he “relies on the memorandum submitted in opposition to Gillette’s Motion” in support of his cross-motion. Cicvara’s opposition papers, however, also *completely* lack any case law or cognizable legal arguments which would entitle him to summary judgment in this case. Instead, as set forth in the Company’s moving and reply papers, Cicvara cannot prevail on his breach of contract claim because he has not conclusively established that he performed under the terms and conditions of the Gillette Company 1971 Stock Option Plan (the “Plan”), or that the Company breached the terms of the Plan. As the party who bears the burden of proof on these issues, his failure to show undisputed facts warranting summary judgment dooms his motion. For these

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reasons, and for the reasons set forth in the Company's motion for summary judgment, Cicvara's cross-motion should be denied and summary judgment should be granted to the Company.

II. ARGUMENT

A. CICVARA'S CROSS-MOTION SHOULD BE DENIED AS UNTIMELY

On February 23, 2011, this Court issued an Order directing that the parties file *all* dispositive motions by April 1, 2011. (Docket Entry No. 67.) On March 17, 2011, the Company filed a motion for an extension of time to file dispositive motions, which this Court granted, and on March 21, 2011, this Court issued an Order extending the time for filing dispositive motions to April 15, 2011. (Docket Entry No. 71.)

On May 31, 2011, well over a month past the Court's deadline for filing dispositive motions, Cicvara filed the instant cross-motion for summary judgment. At no point prior to filing his motion did Cicvara seek an extension of his time to file dispositive motions, nor has he submitted any excuse for his untimely filing. Rule 16(f) of the Federal Rules of Civil Procedure provides the Court with broad discretion to impose sanctions where, as here, a party has failed to comply with a pretrial order. The Company submits that the Court should impose sanctions here in the form of dismissal of Cicvara's cross-motion for summary judgment as untimely. *See, e.g., Julian v. Equifax Check Servs.*, 178 F.R.D. 10, 17 (D. Conn. 1998) (dismissing motion for partial summary judgment filed after the dispositive motion deadline set by the court); *NAS Elecs., Inc. v. Transtech Elecs. Pte Ltd.*, 262 F. Supp. 2d 134, 150 (S.D.N.Y. 2003) (explaining that plaintiffs' cross-motion for summary judgment should be denied as procedurally defective because "it was filed after the time for serving dispositive motions had passed").

B. CICVARA'S RULE 56(a)1 STATEMENT DO NOT COMPLY WITH LOCAL CIVIL RULES 56(a)1 AND 56(a)3 AND MUST BE STRICKEN ON THIS BASIS

Local Rule 56(a)1 states that “[t]here shall be annexed to a motion for summary judgment a document entitled ‘Local Rule 56(a)1 Statement,’ which sets forth in separately numbered paragraphs meeting the requirements of Local Rule 56(a)3 a concise statement of each material fact as to which the moving party contends there is no genuine issue to be tried.” Local Rule 56(a)3 mandates that “[e]ach statement of material fact by a movant in a Local Rule 56(a)1 Statement . . . be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial and/or (2) evidence that would be admissible at trial.” Cicvara’s 56(a)1 Statement is *completely* devoid of citations to admissible evidence, and as such should be stricken and his cross-motion for summary judgment denied. *See, e.g., Martin v. Town of Westport*, 558 F. Supp. 2d 228, 232 (D. Conn. 2008) (explaining that “each statement of material fact . . . must be followed by a specific citation” to admissible evidence); *Lewis v. Sieminski*, 2010 U.S. Dist. LEXIS 99775, at *10-11 (D. Conn. Sept. 22, 2010) (denying plaintiff’s motion for summary judgment for failure to comply with Local Rule 56(a)(1)); *see also Barkley v. Olympia Mortg. Co.*, 2010 U.S. Dist. LEXIS 95060, at *41 (E.D.N.Y. Sept. 13, 2010) (“[D]enial of the . . . motion for summary judgment in this case is appropriate because they have failed to identify undisputed material facts, supported by admissible evidence, which would permit the court to evaluate and provide the factual bases for their instant motion for summary judgment.”); *Banco Cent. de Para. v. Para. Humanitarian Found., Inc.*, 2005 U.S. Dist. LEXIS 293, at *24 (S.D.N.Y. Jan. 6, 2005) (“The Court’s role is not to wander aimlessly through the record in search of evidence that substantiates the allegations in the Rule 56.1 statement. When the movant is responsible for forcing the Court into this role, the Court is completely justified in denying the motion in its entirety.”).

While the lack of citations alone warrants exclusion of Cicvara's 56(a)1 Statement, his submission also should be stricken because it is replete with legal arguments, (*e.g.*, 56(a)1 Stmt., ¶¶ 13, 14), that are wholly inappropriate in a statement of undisputed material facts. *See, e.g., Alliance Sec. Prods. v. Fleming Co.*, 471 F. Supp. 2d 452, 454 (S.D.N.Y. 2007) (“[L]egal arguments . . . belong in briefs, not Rule 56.1 statements, and so are disregarded in determining whether there are genuine issues of material fact.”), *aff'd*, 290 Fed. Appx. 380 (2d Cir. 2008); *Jessamy v. City of New Rochelle*, 292 F. Supp. 2d 498, 509 n.12 (S.D.N.Y. 2003) (disregarding “self-serving and legally conclusory statement” in Rule 56.1 statement). In sum, the legal conclusions in Cicvara's Rule 56(a)1 Statement and the absence of any record evidence to support his “facts” provides a basis for denying Cicvara's cross-motion. *See Banco Cent. de Para.*, 2005 U.S. Dist. LEXIS 293, at *24.

C. CICVARA HAS NOT ESTABLISHED THAT HE IS ENTITLED TO SUMMARY JUDGMENT ON HIS BREACH OF CONTRACT CLAIM

Summary judgment should be granted where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). To carry its initial burden, the moving party must show that “there is an absence of evidence to support the nonmoving party's case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). “If the moving party bears the ultimate burden of proof at trial, the standard is more stringent.” *Kimbrow v. I.C. Sys.*, 336 F. Supp. 2d 188, 190 (D. Conn. 2004); *see also Nat'l State Bank v. Fed. Res. Bank*, 979 F.2d 1579, 1580 (3d Cir. 1992) (“Where the party moving for summary judgment is the plaintiff, or the party who bears the burden of proof at trial, the standard is more stringent.”). The complete lack of citations to the record in Cicvara's Local Rule 56(a)1 not only demonstrates that his cross-motion is procedurally defective, but also shows that he does not have *any* admissible evidence entitling him to summary judgment on his breach

of contract claim. *Vt. Teddy Bear Co. v. 1-800 BEARGRAM Co.*, 373 F.3d 241, 244 (2d Cir. 2004) (explaining that in determining “whether the moving party has met this burden of showing the absence of a genuine issue for trial, the district court . . . must be satisfied that the citation to evidence in the record supports the assertion”).

Rather, as set forth in detail in the Company’s motion for summary judgment, the Company is entitled to summary judgment because it did not breach any agreement owed to Cicvara. The Company respectfully refers the Court to its motion for summary judgment and accompanying papers, which demonstrate that the Company terminated Cicvara’s employment for cause only after an investigation revealed that Cicvara visited the hotel room of Bel Liu (“Liu”), a female manager of a Company supplier known as Practical Lighting Company (“Practical Lighting”), stripped down to his underwear, massaged her feet and back despite the fact that she had not asked him to do so, and admittedly told her that “one could rape [her].” Based on its findings at the conclusion of its investigation, the Company reasonably concluded that Cicvara’s outrageous behavior violated its policy against harassment and its Purpose, Values and Principles (“PVPs”), and accordingly terminated his employment for cause. As a result of that termination for cause, Cicvara’s stock options were cancelled by operation of the terms of the Gillette Company 1971 Stock Option Plan (the “Plan”), which states that an employee forfeits his stock options if he is terminated for “gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary.” (Defs.’ Br. at 9-14.) For these reasons, Cicvara cannot prove that he complied with his obligations under the Plan or that the Company breached any duty it owed to him under the Plan, which are crucial elements of his breach of contract claim. Consequently, the Court should deny Cicvara’s cross-motion for

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summary judgment and grant the Company's motion for summary judgment dismissing Cicvara's claims in Count One of the Amended Complaint.

III. CONCLUSION

For the foregoing reasons, and the reasons set forth in the Company's motion for summary judgment, the Court should deny Cicvara's cross-motion for summary judgment and grant the Company's motion for summary judgment; grant to the Company its attorneys' fees and costs in this case; and grant to the Company such other and further relief as the Court may deem just and proper.

Dated this 16th day of June, 2011, at New York, New York.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

----- x
PREDRAG CICVARA,

Plaintiff,

v.

THE GILLETTE COMPANY and PROCTER &
GAMBLE COMPANY and DURACELL, AN ENTITY
OF UNKNOWN FORM and LYNNE BURNETT,

Defendants.
----- x

: Civil Action No. 3:09-cv-2054
: (JCH) (HF)

: June 16, 2011

**DEFENDANTS' LOCAL RULE 56(a)2 STATEMENT IN RESPONSE TO
PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 56(a)2, defendants The Gillette Company and The Procter & Gamble Company ("P&G") (collectively, the "Defendants" or the "Company") respectfully submit this response to plaintiff Predrag Cicvara's ("Cicvara's") Statement of Undisputed Material Facts in opposition to his cross-motion for summary judgment.¹

1. Undisputed.

¹ The responses set forth herein are followed by citations to the Company's Local Civil Rule 56(a)1 Statement of Material Facts ("Defs.' 56(a)1") (Docket Entry No. 74). The Company incorporates herein all citations to the record provided in Defs.' 56(a)1. Copies of all deposition testimony, deposition exhibits, and other documents cited herein are annexed to the Declaration of Edward Cerasia II, Esq., dated April 15, 2011 (Docket Entry No. 75), the Declaration of Lynne Burnett, dated April 11, 2011 (Docket Entry No. 78), the Declaration of Peggy Wilczewski, dated April 14, 2011 (Docket Entry No. 77), the Declaration of Dina Schmude, dated April 14, 2011 (Docket Entry No. 76), and the Declaration of Kevin Babis, dated April 15, 2011 (Docket Entry No. 79), submitted with the Company's motion for summary judgment.

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2. Disputed. Section 6(f)(B) of The Gillette Company 1971 Stock Option Plan (the “Plan”) does not state that an employee “must be found to be guilty of ‘gross misconduct.’”

Rather, Section 6(f) states:

If an employee Participant is discharged for Cause, as hereinafter defined, all his options shall immediately be cancelled effective as of the date of termination of his employment. For the purposes of the Plan . . . a discharge for “Cause” shall have occurred where a Participant is terminated because of

. . . .

(B) the Participant’s engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary.

(Defs.’ 56(a)1, ¶ 50.)

3. Disputed. Cicvara engaged in admitted sexual misconduct during a business trip to Asia which negatively affected the Company’s reputation, caused Bel Liu (“Liu”), a general manager at Practical Lighting (“Practical”), a Company Supplier, to complain about him, and strained the Company’s relationship with Practical. (*Id.*, ¶¶ 20-37, 42, 43.) After a thorough investigation, the Company determined that Cicvara’s employment should be terminated for cause because of his gross misconduct. (*Id.*, ¶¶ 38-48.)

4. Disputed. The Company learned about Cicvara’s inappropriate conduct on June 9, 2009, and conducted an investigation of the matter from June 9, 2009 through June 15, 2009. (*Id.*, ¶¶ 36-47.) The Company terminated Cicvara’s employment on June 15, 2009, the same date that Lynne Burnett (“Burnett”), Kevin Babis (“Babis”) and Peggy Wilczewski (“Wilczewski”) spoke with Cicvara regarding the incident and Cicvara admitted, among other things, that he told Liu “I could rape you.” (*Id.*, ¶¶ 44-48.)

5. Disputed. The Company made significant efforts at investigating the matter, which including speaking with Liu, reviewing text messages and e-mails authored by Cicvara,

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and speaking with Cicvara regarding the allegations against him. (*Id.*, ¶¶ 37-47.) At the conclusion of this comprehensive investigation, the Company terminated Cicvara's employment for violating the Company's Purpose, Values and Principles and company policy by engaging in harassing behavior toward a company supplier. (*Id.*, ¶ 48.)

6. Disputed. Cicvara sought to exercise his stock options after these options were already forfeited by the terms of the Plan. (*Id.*, ¶ 61.)

7. Undisputed in part and disputed in part. The Company cannot allow Cicvara to exercise his stock options because these options were forfeited pursuant to Section 6(f) of the Plan. (*Id.*, ¶¶ 50, 57, 60, 61.)

8. Disputed. At the time of his termination, Cicvara could not exercise his stock options because he had been terminated for cause, resulting in the forfeiture of his stock options under Section 6(f) of the Plan. (*Id.*, ¶¶ 50, 57, 60, 61.)

9. Undisputed in part and disputed in part. The Company agrees that Cicvara was terminated on June 15, 2009; however, his termination occurred during an in-person meeting at a conference room in the Company's Bethel, Connecticut office. (*Id.*, ¶¶ 44, 48.) The Company thereafter notified Cicvara on June 16, 2009, and again on July 6, 2009, that his stock options had been forfeited. (*Id.*, ¶¶ 58-61.)

10. Disputed. As stated in response to paragraph 5, the Company made significant efforts at investigating the matter, which including speaking with Liu, reviewing text messages and e-mails authored by Cicvara, and speaking with Cicvara regarding the allegations against him. (*Id.*, ¶¶ 37-47.) At the conclusion of this comprehensive investigation, the Company terminated Cicvara's employment for violating the Company's Purpose, Values and Principles and company policy by engaging in harassing behavior toward a company supplier. (*Id.*, ¶ 48.)

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11. Disputed. The Company does not understand which “administrative and/or appeal remedies” Cicvara references in this statement.

12. Disputed. Although the Company does not understand which “administrative and/or appeal remedies” Cicvara references in this statement, it states that it has not “waived” any such remedies.

13. Disputed. The Company had sole discretion to determine whether Cicvara’s actions constituted “gross misconduct which [was] materially and demonstrably injurious to the Company or the subsidiary.” (Defendants’ Memorandum of Law in Support of Their Motion for Summary Judgment at 11-12.) Further, the Company reasonably concluded that Cicvara’s inappropriate sexual advances toward Liu constituted gross misconduct. (Defs.’ 56(a)1, ¶¶ 48, 57.)

14. Disputed. As the Company stated in response to paragraph 3, Cicvara engaged in inappropriate sexual behavior while on a business trip, which impacted the Company’s reputation, caused harm to Liu, who complied about Cicvara, and impaired the Company’s relationship with Practical. (*Id.*, ¶¶ 20-37, 42, 43.)

15. Disputed. As stated in response to paragraphs 5 and 10, the Company thoroughly investigated the matter by speaking with Liu and Cicvara and reviewing text messages and e-mails authored by him. (*Id.*, ¶¶ 37-47.) The Company terminated Cicvara’s employment for cause only after its comprehensive investigation. (*Id.*, ¶ 48.)

16. Disputed. The Company is not aware of any “letters of dismissal” that state that it terminated Cicvara because of a violation of Section 6(f)(A) of the Plan. The Company admits, however, that Wilczewski erroneously cited to Section 6(f)(A) of the Plan in her June 16, 2009 correspondence to Cicvara. (Wilczewski Decl., Ex. H.) However, the Company had made clear

at all times that it was terminating Cicvara's employment because of his inappropriate behavior toward Liu, and not because of poor performance. (Defs.' 56(a)1, ¶ 48.)

17. Disputed. Section 6(f)(A) defines "cause" as the "Participant's continued failure to perform substantially his duties with the Company . . . after a written demand for performance is delivered to the Participant." (Cicvara Dep. Ex. 15 at PG000191-92.) Cicvara, however, was terminated pursuant to the definition of "cause" found in Section 6(f)(B) of the Plan and not the definition in Section 6(f)(A). (Defs.' 56(a)1, ¶ 48.)

18. Undisputed in part and disputed in part. The Company agrees that it did not provide Cicvara with a written demand pursuant to Section 6(f)(A); however, the Company had no obligation to do so because Cicvara's employment was terminated pursuant to Section 6(f)(B) of the Plan and not Section 6(f)(A). (Defs.' 56(a)1, ¶ 48.)

**DEFENDANTS' LOCAL RULE 56(a)2 STATEMENT
OF DISPUTED MATERIAL FACTS**

19. Pursuant to Local Rule 56(a)2, the Company states that there are no material facts as to which it is contended there is a genuine issue to be tried and therefore the Company is entitled to summary judgment. The Company further states that, at the very least, all of the

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above facts show that there are issues of fact precluding Cicvara's cross-motion for summary judgment.

Dated this 16th day of June, 2011, at New York, New York.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

PREDRAG CICVARA,	:	CIVIL CASE NO.
Plaintiff,	:	3:09-cv-2054 (JCH)
	:	
v.	:	
	:	
THE GILLETTE COMPANY, et al.,	:	NOVEMBER 22, 2011
Defendants.	:	

**RULING RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
(DOC. NO. 74) & PLAINTIFF'S CROSS-MOTION FOR SUMMARY
JUDGMENT (DOC. NO. 85)**

I. INTRODUCTION

This case arises from the termination of the employment of the plaintiff, Predrag Cicvara, as a Quality Assurance Manager for The Gillette Company, a subsidiary of The Proctor and Gamble Company (together, "Gillette"). In his Amended Complaint, Cicvara asserts breach of contract and unjust enrichment claims with regard to stock options, severance pay, and an annual bonus, as well as a statutory claim for unpaid wages under Connecticut General Statutes § 31-72.

On April 15, 2011, Gillette filed a Motion for Summary Judgment. Doc. No. 74. In response, Cicvara withdrew six of his claims, leaving only the breach of contract claim as to his stock options. Cicvara also filed a Cross Motion for Summary Judgment on the stock options claim. Doc. No. 85. For the following reasons, the court grants the defendants' Motion for Summary Judgment and denies the plaintiff's Motion.

II. FACTS¹

Cicvara began his employment with Gillette on or about November 1, 2000. Defendant's Local Rule 56(a)(1) Statement (hereinafter "Def.'s 56(a)(1) St."), ¶ 11. From approximately June 1, 2008, until his termination on June 15, 2009, Cicvara held the position of Quality Assurance Manager ("QA Manager") for Gillette's Duracell division. Id. ¶ 12. As a QA Manager, Cicvara was required to interact with Gillette's suppliers on all quality-related issues and to participate in audits of the suppliers' factories. Id. ¶ 15. His job description explicitly included the following responsibility: "Provide professional representation of Duracell/P&G per the P&G Worldwide Business Conduct Manual. This is vitally important in dealing with Contractors and Suppliers in that plans, decisions, and commitments could have significant impact from a financial and/or confidentiality perspective." Id. ¶ 14; Cicvara Dep. Ex. 4.

A. Plaintiff's Conduct in Thailand

In June 2009, Cicvara traveled to Indonesia, Thailand, and China to audit four factories owned by Practical Lighting ("Practical"), one of Gillette's flashlight suppliers. Def.'s 56(a)(1) St., ¶¶ 22, 16. Prior to the audits, the relationship between Practical and Gillette had become "strained" when Practical learned that Gillette had contracted with a competitor to produce certain models of its "Daylite" flashlight. Id. ¶ 19. In response, Gillette contracted with Practical to produce Daylite models utilizing type "C" and "D" cell Duracell batteries. Id. ¶ 19.

¹ In his response to Gillette's Statement of Undisputed Material Facts, the plaintiff frequently fails to comply with the requirements of Local Rule 56(a)(2). Where Gillette's asserted fact is supported by evidence in the record and Cicvara has either (1) failed to provide specific citations to support his denial of the fact, or (2) merely added commentary that does not deny the existence of the fact, the court will deem the fact to be admitted. L.R. 56(a)(3) ("[F]ailure to provide specific citations to evidence in the record as required by this Local Rule may result in the Court deeming certain facts that are supported by the evidence admitted.")

Practical's Chairman, Andrew Yau, and its general manager, Bel Liu, traveled from Practical's headquarters in Hong Kong to meet with Cicvara and Gillette's auditors at the factories. Id. ¶¶ 20-22. Liu was one of Gillette's primary contacts at Practical, and Cicvara and she had met on two prior occasions. Id. ¶¶ 20-21.

On June 8, 2009, while in Thailand, Cicvara had dinner with Yau, Liu, and another Practical employee. Id. ¶ 26. Liu left dinner early, because she was not feeling well. Id. After dinner, Cicvara sent Liu a text message and asked if he could bring dessert to her hotel room. Id. ¶ 27. Liu initially said no, but, in a subsequent text message, she consented to a visit. Cicvara Dep. at 69, lines 21-25. At some point after he entered Liu's hotel room, Cicvara removed his shorts and sat on her bed in his underwear. Id. at 136-38. He proceeded to massage her feet and back. Liu, who had not requested a massage, asked him to stop. Id. at 71-72, 126. At some point before leaving the hotel room, Cicvara said to Liu, "[W]hen you do that with your legs one could rape you." Id. at 86, lines 22-25.

The following day, June 9, Liu spoke with Austin Lin, a Gillette employee with whom she had worked previously. Def.'s 56(a)(1) St., ¶¶ 36, 24. Liu told Lin of Cicvara's behavior the night before. Lin encouraged her to report the incident to Andrew Yau, Practical's Chairman. Id. ¶ 36.

Also on June 9, Cicvara sent Liu the following text message: "I hope you will bew [sic] better soon. Feel terrible that can't be with you and pamper you." Id. ¶ 32. Liu responded, "Thx P. I'm fine but I have to re-emphasize that we are not either couples or lovers. Pls stop thinking about me." Id. Cicvara replied, "Right. No need to emphasize the obvious. Thx for the good time though. P." Id.

On either June 9 or 10, Liu left a Hard Rock Café shirt—which Cicvara had purchased for her earlier—outside his hotel room door. Compare Def.'s 56(a)(1) St., ¶ 31, with Pl.'s 56(a)(2) St. at 13. Upon discovering it, Cicvara went to Liu's room to ask why she had returned the gift. Def.'s 56(a)(1) St., ¶ 51. At this point, Liu called Andrew Lin, a Gillette employee with whom she had worked previously. Id. Part of the ensuing conversation between Liu and Cicvara was recorded on Lin's voicemail. Id.

On June 10, Cicvara texted: "Just wanted to tell you that I am still in a shock and disgusted by myself and my poor judgment of things that were going btw us. Forgive me if you can. P." Cicvara Dep. at 105, lines 4-14. On a flight from Thailand to China later the same day, Cicvara wrote Liu an email that included the following passage:

I would love nothing more than to take back few emotional outbreaks that I experinced [sic] last few days. Had I known that I would have risked losing such a precious thing as our friendship, I wouldn't have ever attempted what I so foolishly did misjudging the nature of our closeness in the last few days.

Maybe the cultural differences that you so graciously tried to point out in one of our conversations did ironically played the part in what transpired lately. I believe if you had taken a strong stance against my foolish attempts to get more out of our relation stopping it from the very beginning, I would have stopped then and would have still be in that special relation with you that meant so much to me. By being so polite and trying not to hurt my feelings, you have unconsciously [sic] encouraged my (macho? possessive? animouse? [sic] stupid?) efforts to get more than you were ready to give.

Def.'s 56(a)(1) St., ¶ 34. Liu responded, "I'm sorry because I don't love you but I know you love me so. I appreciated you in the past because were just friend. What I cannot accept is what you did in the last few days. Without those dirty things we can be friends." Id. ¶ 35. Cicvara replied, "I can promise that never again I will be a 'dirty man' with you." Id.

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B. Gillette's Response

At some point after speaking to Liu on June 9, Austin Lin told Dina Schumde, Gillette's Human Resource Manager in Bethel, Connecticut, about the incident in Liu's hotel room. Def.'s 56(a)(1) St., ¶ 36. Schumde, in turn, reported the incident to Lynn Burnett, Gillette's Global Human Resources Director. Id. ¶ 37.

On June 11, Schumde and Senior Human Resources Manager, Peggy Wilczewski, discussed the incident with Liu by phone. Id. ¶ 38. The following day, Liu forwarded copies of some of the text message and e-mails Cicvara and she had exchanged during the trip. Id. ¶ 40. She also reviewed and edited Wilczewski's notes of their phone interview for accuracy. Id.

On June 14, Andrew Yau, Practical's Chairman, emailed Nitesh Singh, Gillette's Senior Purchasing Manager, to let him know that Cicvara had made "inappropriate sexual advances toward [Liu]" and that Cicvara was no longer welcome at Practical. Id. ¶ 42; Cicvara Dep. Ex. 12.

On June 15, Burnett, Wilczewski, and Cicvara's supervisor, Kevin Babis, met with Cicvara to discuss Liu's allegations. Id. ¶ 44. At the meeting, Cicvara admitted that he had gone to Liu's hotel room on June 8 and that, while there, he had touched her. Id. ¶ 45. He also admitted that he made the comment, "When you do such things with your leg, one could rape you." Id.; Pl.'s 56(a)(2) at 23.

At the end of the meeting, Burnett, Babis, and Wilczewski left the room to confer privately. Id. ¶ 48. After unanimously deciding that Cicvara's misconduct warranted termination, they informed Cicvara that he was being discharged from his position at Gillette. Id.

C. Forfeiture of Plaintiff's Stock Options

Over the course of his employment at Gillette, Cicvara was awarded several thousand stock options pursuant to the Gillette 1971 Stock Option Plan ("the Plan"). Section 6(f) of the Plan provides: [I]f an employee Participant is discharged for Cause, as hereinafter defined, all his options shall immediately be cancelled effective as of the date of termination of his employment. Cicvara Dep. Ex. 15 at 8. The Plan further states that "a discharge for 'Cause' shall have occurred where a Participant is terminated because of . . . (B) the Participant's engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary." Id. at 8-9.

The Plan is administered by a Compensation Committee, which is granted express authority to "decide all questions and settle all controversies and disputes which may arise in connection with the Plan." Id. at 2. The Plan further provides that "[a]ll decisions, determinations and interpretations of the Committee shall be binding on all parties concerned." Id. at 2.

Finally, the Plan states that it, and each option issued under it, "shall be governed by and construed in accordance with the laws of the State of Ohio." Id. at 16.

Cicvara attempted to exercise his stock options on July 2, 3009. Def.'s 56(a)(1) St., ¶ 61. Gillette rejected the attempt, maintaining that, because Cicvara had been terminated for cause, his stock options were automatically forfeited pursuant to Section 6(f) of the Plan. Id.

III. SUMMARY JUDGMENT STANDARD

On a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); White v. ABCO Engineering Corp., 221 F.3d 293, 300 (2d Cir. 2000). Once the moving party has met its burden, in order to defeat the motion, the nonmoving party must “set forth specific facts showing that there is a genuine issue for trial,” Anderson, 477 U.S. at 255, and present such evidence as would allow a jury to find in his favor. Graham v. Long Island R.R., 230 F.3d 34, 38 (2d Cir. 2000).

In assessing the record to address questions of fact, the trial court must resolve all ambiguities and draw all inferences in favor of the party against whom summary judgment is sought. Anderson, 477 U.S. at 255; Graham, 230 F.3d at 38. Summary judgment “is properly granted only when no rational finder of fact could find in favor of the non-moving party.” Carlton v. Mystic Transp., Inc., 202 F.3d 129, 134 (2d Cir. 2000). “When reasonable persons, applying the proper legal standards, could differ in their responses to the question” raised, on the basis of the evidence presented, the question must be left to the finder of fact. Sologub v. City of New York, 202 F.3d 175, 178 (2d Cir. 2000).

IV. DISCUSSION

A. Applicable Law

The Plan provides that it and each option issued under it “shall be governed by and construed in accordance with the laws of the State of Ohio.” Cicvara Dep. Ex. 15 at 16. Under Connecticut law, a choice-of-law clause will typically be given effect,

provided the choice was made in good faith. Messler v. Barnes Group, Inc., 1999 WL 61034, at *3 (Conn. Super. Feb. 1, 1999). Here, neither party disputes the validity of the Plan's choice of Ohio law. Accordingly, the court looks to Ohio law to evaluate Cicvara's breach of contract claim regarding the termination of his stock options.

B. Scope of Review

To prevail on his breach of contract claim, Cicvara must establish the existence of a contract, performance by him, a breach by Gillette, and damage or loss to him. See, e.g., Doner v. Snapp, 649 N.E.2d 42, 44 (Ohio Ct. App. 1994). Gillette does not dispute that the Plan constituted a contract, but it argues that Civara cannot establish that he performed and that Gillette breached its duties under the Plan. Def.'s Mem. in Supp. at 10.

As discussed earlier, the Plan provides that, if an employee is fired for "Cause," his stock options shall "immediately be cancelled." Cicvara Dep. Ex. 15 at 8. Further, it defines "Cause" to include "gross misconduct which is materially and demonstrably injurious to the Company or the subsidiary." Id. at 8–9. Cicvara argues that the determination of whether he performed and Gillette breached is dependent on a determination of whether his behavior in Thailand can fairly be considered "gross misconduct which is materially and demonstrably injurious to the company or the subsidiary." While acknowledging that his behavior "could be deemed inappropriate," Cicvara contends that the question of whether it rose to the level of "gross misconduct" is a disputed issue of fact that must be decided by the jury. Pl.'s Mem. in Opp. at 6.

Gillette, on the other hand, argues that "an employer's decision to terminate an employee's non-ERISA benefits, such as stock options, should be set aside only if the

employer's decision was arbitrary and capricious." Def.'s Mem. in Supp. at 13. Under this standard of review, the court need not make an independent determination of whether Cicvara's behavior was, in fact, gross misconduct. Instead, it simply needs to decide whether Gillette had "a reasonable basis" for its own determination. Id.

The court's survey of Ohio law reveals no decisions that specifically address the extent to which a court should review a company's decision to terminate an employee's stock options. As such, the court must "carefully predict how [Ohio's] highest court would resolve [the issue]." Travelers Ins. Co. v. Carpenter, 411 F.3d 323, 329 (2d Cir. 2005) (internal quotation marks and citations omitted). In doing so, the court should "give the fullest weight to pronouncements of the state's highest court . . . while giving proper regard to relevant rulings of the state's lower courts." Maska U.S., Inc. v. Kansa Gen. Ins. Co., 198 F.3d 74, 78 (2d Cir. 1999). Finally, it "may also consider decisions in other jurisdictions on the same or analogous issues." Id.; see also Santalucia v. Sebright Transp., Inc., 232 F.3d 293, 299 (2d Cir. 2000) (finding that the New York Court of Appeals would likely "follow the majority of states" on an issue); Vigortone AG Prods., Inc. v. PM AG Prods., Inc., 316 F.3d 641, 644 (7th Cir. 2002) ("[T]he best guess is that the state's highest court, should it ever be presented with the issues, will line up with the majority of the states.")

Several courts outside of Ohio have held that, where a stock option plan expressly grants an employer discretion to interpret its terms, the employer's decision to cancel an employee's options is subject only to arbitrary-and-capricious review. See, e.g., Noonan v. Staples, Inc., 556 F.3d 20, 33 (1st Cir. 2009) (surveying decisions in other states and predicting that the Massachusetts Supreme Court would overturn an

employer's determination that an employee engaged in "willful misconduct" only if that decision was "arbitrary, capricious, or made in bad faith"); Weir v. Anaconda Co., 773 F.2d 1073, 1078 (10th Cir. 1985) (under Kansas law, "the plan committee's decision [to terminate stock options] must be upheld if it was properly within the committee's discretion and not arbitrary, in bad faith, or fraudulent"); Welland v. Citigroup, 2003 WL 22973574, at *11 (S.D.N.Y. 2003) ("Under New York law, an employer's decision regarding non-ERISA benefits may be set aside only where it was made in bad faith was arbitrary or was the result of fraud."); W.R. Berkley Corp. v. Hall, 2005 WL 406348, at *4 (Del. Super. Feb. 16, 2005) ("[W]hen a stock option committee is vested with final, binding, and conclusive authority to determine a participant's right to receive or retain benefits, that decision made in accordance with the provisions of the agreement will not be second guessed by the Court absent a showing of fraud or bad faith."); McIntyre v. Phila. Suburban Corp., 90 F. Supp.2d 596, 600 (E.D. Pa. 2000) (holding that a compensation committee's decisions regarding administration of a stock option plan should be afforded significant deference).

Furthermore, while Ohio courts have not addressed the standard of review for termination of employee stock options, they have approved limited review in the context of other employment benefit disputes. See, e.g., Rehor v. Ohio Case Western Reserve University, 331 N.E. 2d 416, 422 (Ohio 1975) (upholding a university board's contractually reserved right to change the retirement age for tenured faculty members where such change was reasonable and uniformly applicable); State ex rel. Merrill v. Greenbaum, 84 N.E.2d 253, 255 (Ohio Ct. App. 1948) (interpreting pension fund rule stating that a board "may" grant benefits to eligible employees as conferring discretion

to deny benefits to any employee so long as that denial was not “captious, arbitrary, or unreasonable”). Additionally, in breach of contract suits for wrongful discharge, Ohio courts have expressed a reluctance to second-guess an employer’s interpretation of what constitutes “cause” for termination. See, e.g., Washington v. Cent. State Univ., 699 N.E.2d 1016, 1019 (Ohio Ct. Cl. 1998) (“The court has previously acknowledged that it may not substitute its judgment for that of the employer and may not second-guess the business judgments of employers making personnel decisions.”) (internal citations omitted”); Lynch v. EG&G Mound, Inc., 1999 WL 34790, at *8 (Ohio Ct. App. Jan. 29, 1999) (stating same general rule).

In light of these precedents and the Plan language stating that Gillette’s Compensation Committee “shall have authority . . . to decide all questions and settle all controversies and disputes which may arise in connection with the Plan,” Cicvara Dep. Ex. 15 at 1–2, the court predicts that the Ohio Supreme Court would hold that Gillette’s decision that Cicvara had engaged in “gross misconduct which is materially and demonstrably injurious to the company or the subsidiary” may be reviewed only to determine if it was arbitrary, capricious, or made in bad faith.

C. Reasonableness of Gillette’s Determination

On the basis of the evidence presented, no rational trier of fact could find that Gillette failed to exercise its discretion reasonably and in good faith. Cicvara disputes none of the following: Gillette received information suggesting that he had made unwanted sexual advances toward Bel Liu, an employee of Practical, a Gillette supplier. When contacted by Gillette representatives, Liu confirmed the allegations and provided copies of emails and text messages that corroborated her version of events.

Additionally, Cicvara does not dispute that Gillette's relationship with Practical was already strained prior to this incident, or that, upon learning of the incident, Practical's Chairman informed Gillette that Cicvara was no longer welcome at his company's facilities. Finally, while Cicvara challenges the accuracy of Wilczewski's notes from the meeting at which he was terminated, Pl.'s 56(a)(2) at 21, he does not dispute that, at this meeting, he admitted that he went to Liu's hotel room, touched her, and said, "When you do such thing[s] with your legs, one could rape you." *Id.* at 24.

In the face of the aforementioned undisputed facts, no rational juror could find that Gillette lacked a reasonable, good faith basis to determine, first, that Cicvara had engaged in gross misconduct, and, second, that this misconduct was materially and demonstrably injurious to Gillette.² As a result, Cicvara cannot show that Gillette breached a contractual duty when it terminated his stock options pursuant to Section 6(f)(B) of the plan, and Gillette is entitled to summary judgment on this claim.

V. CONCLUSION

For the foregoing reasons, the defendants' Motion for Summary Judgment (Doc. No. 74) is **granted**, and the plaintiff's Cross Motion for Summary Judgment (Doc. No. 85) is **denied**.

² Cicvara questions Lin's motives for reporting the incident in Bangkok, alleging that Lin and Liu had an "intimate relationship." Pl.'s 56(a)(2) St. at 17. He further suggests that Yau and Liu conspired to entrap him, *id.* at 20, and that Yau intended "to use [the] alleged sexual harassment of Bel Liu as leverage, to improve his business with Duracell." *Id.* at 17. Lin's, Liu's, and Yau's motivations or biases, however, are irrelevant to the question of whether Gillette's evaluation of the information they provided regarding Cicvara's conduct—the essence of which was admitted to by Cicvara—was arbitrary, capricious, or made in bad faith.

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SO ORDERED.

Dated at Bridgeport, Connecticut, this 22nd day of November, 2011.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PREDRAG CICVARA,

v.

3:09cv2054(JCH)

GILLETTE CO.,
DURACELL,
LYNNE BURNETT,
PROCTOR & GAMBLE CO., INC.

J U D G M E N T

This matter came on before the Honorable Janet C. Hall, United States District Judge, as a result of defendants' Motion for Summary Judgment, plaintiff's Cross Motion for Summary Judgment, and Motion to Dismiss filed by defendant Lynne Burnett.

The Court has reviewed all of the papers filed in conjunction with the motions. On November 22, 2011, the court entered a Ruling granting defendants' Motion and denying plaintiffs' Motion. In addition, on July 22, 2010, the court entered an order, on the record, granting Motion to Dismiss as to defendant Lynne Burnett.

Therefore, it is ORDERED and ADJUDGED that judgment is entered for the defendants, against the plaintiff, and the case is closed.

Dated at Bridgeport, Connecticut, this 29th day of November, 2011.

Robin D. Tabora, Clerk

By /s/ Bernadette J. DeRubeis
Deputy Clerk

Entered on Docket _____

A-834

Case 12-338 Document 58-1 Filed 07/23/12 Page 261 of 273

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT


FILED

2012 JAN 19 A 9 26

U.S. DISTRICT COURT
BRIDGEPORT, CONN

CICVARA, PREDRAG : 3:9-CV-2054(JCH) (HF)
Plaintiff, :
V. : NOTICE OF APPEAL
THE GILLETTE COMPANY et al :
Defendant. : JANUARY 19, 2012

Notice is hereby given that PREDRAG CICVARA Plaintiff in the above-named case hereby
appeal to the United States Court of Appeals for the Second Circuit from the final judgment
entered in this action on the 13th day of December 2011.


Igor I. Sikorsky, Jr.
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Unionville, CT 06085
(860) 675-5313
CT Fed Bar No.:04233

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APPEAL, CLOSED, EFILE

U.S. District Court
United States District Court for the District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:09-cv-02054-JCH

Cicvara v. Gillette Co et al
Assigned to: Judge Janet C. Hall
Cause: 28:1332 Diversity-Notice of Removal

Date Filed: 12/17/2009
Date Terminated: 11/30/2011
Jury Demand: Both
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Diversity

Plaintiff

Predrag Cicvara

represented by **Igor I. Sikorsky , Jr.**
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Case 1:09-cv-02054-JCH Document 1-1 As of 07/23/2012 05:19 PM EST Page 112 of 101

ATTORNEY TO BE NOTICED

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED**Richard I. Scharlat**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED**Defendant****Duracell****Defendant****LYNNE BURNETT**
TERMINATED: 07/22/2010represented by **Edward Cerasia , II**
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ATTORNEY TO BE NOTICED**Hema Chatlani**
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LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED**Richard I. Scharlat**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/17/2009	<u>1</u>	NOTICE OF REMOVAL from JD of Fairfield, case number FBT-CV09-5028901-S., filed by Gillette Co, Proctor & Gamble Co. (Attachments: # <u>1</u> Exhibit)(Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>2</u>	NOTICE of Appearance by Richard I. Scharlat on behalf of Gillette Co, Proctor & Gamble Co (Bauer, J.) (Entered: 12/22/2009)

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12/17/2009	<u>3</u>	NOTICE of Appearance by Edward Cerasia, II on behalf of Gillette Co, Proctor & Gamble Co (Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>4</u>	Compliance with Standing Order by Gillette Co, Proctor & Gamble Co (Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>5</u>	NOTICE of No Pending Motions by Gillette Co, Proctor & Gamble Co (Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>6</u>	Corporate Disclosure Statement by Gillette Co, Proctor & Gamble Co. (Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>7</u>	ELECTRONIC FILING ORDER -- PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER. Signed by Judge Janet C. Hall on 12/17/09. (Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>8</u>	PROTECTIVE ORDER. Signed by Judge Janet C. Hall on 12/17/09. (Bauer, J.) (Entered: 12/22/2009)
12/17/2009	<u>9</u>	Order on Pretrial Deadlines: Motions to Dismiss due on 3/17/2010. Amended Pleadings due by 2/15/2010 Discovery due by 6/18/2010 Dispositive Motions due by 7/18/2010. Signed by Clerk on 12/17/09. (Bauer, J.) (Entered: 12/22/2009)
12/17/2009		Filing fee: \$ 350.00, receipt number B018994 (Jaiman, R.) (Entered: 12/22/2009)
12/22/2009	<u>10</u>	Consent MOTION for Extension of Time until January 22, 2010 (pursuant to Local Rule 7(b)) to file a responsive pleading to Plaintiffs Complaint re: <u>1</u> Notice of Removal by Gillette Co, Proctor & Gamble Co. (Attachments: # <u>1</u> Certificate of Service)(Cerasia, Edward) (Entered: 12/22/2009)
12/23/2009	<u>11</u>	ORDER granting <u>10</u> Motion for Extension of Time. The court expects this will be the only extension. SO ORDERED by Judge Janet C. Hall on 12/23/09. (Volek, J.) (Entered: 12/23/2009)
12/29/2009		Answer deadline updated for Gillette Co to 1/22/2010; Proctor & Gamble Co to 1/22/2010. (DeRubeis, B.) (Entered: 12/29/2009)
01/06/2010	<u>12</u>	NOTICE of Appearance by Michael E. Skiber on behalf of Predrag Cicvara (Skiber, Michael) (Entered: 01/06/2010)
01/06/2010	<u>13</u>	First MOTION to Amend/Correct COMPLAINT ONCE AS A MATTER OR COURSE by Predrag Cicvara.Responses due by 1/27/2010 (Skiber, Michael) (Entered: 01/06/2010)
01/06/2010	<u>14</u>	AMENDED COMPLAINT ONCE AS A MATTER OF COURSE against all defendants, filed by Predrag Cicvara.(Skiber, Michael) (Entered: 01/06/2010)
01/06/2010	<u>15</u>	First MOTION to Remand to State Court AND JOINDER OF PARTY by Predrag Cicvara.Responses due by 1/27/2010 (Skiber, Michael) (Entered: 01/06/2010)
01/06/2010	<u>16</u>	First Memorandum in Support re <u>15</u> First MOTION to Remand to State Court AND JOINDER OF PARTY filed by Predrag Cicvara. (Skiber, Michael) Modified on 1/22/2010 TO CREATE DOCKET ENTRY RELATIONSHIP TO DOC #17 (Simpson, T.). (Entered: 01/06/2010)
01/06/2010	<u>17</u>	MOTION for Joinder by Predrag Cicvara --ORIGINALLY E-FILED IN ERROR AS PART OF DOCUMENT # 15; REDOCKETED TO PROPERLY IDENTIFY AS A TWO PART MOTION (Simpson, T.) (Entered: 01/22/2010)
01/11/2010		Summons Issued as to LYNNE BURNETT. (Simpson, T.) (Entered: 01/11/2010)
01/22/2010	<u>18</u>	ANSWER to <u>14</u> Amended Complaint with Affirmative Defenses. dated 1/22/2010 by Gillette Co, LYNNE BURNETT, Proctor & Gamble Co.(Scharlat, Richard) (Entered: 01/22/2010)
01/22/2010	<u>19</u>	CERTIFICATE OF SERVICE by Gillette Co, Proctor & Gamble Co., Inc re <u>18</u> Answer to Amended Complaint (Scharlat, Richard) (Entered: 01/22/2010)
01/22/2010	<u>20</u>	MOTION to Dismiss dated 1/22/2010 Count Eight and Lynne Burnett from the amended complaint by Gillette Co, LYNNE BURNETT, Proctor & Gamble Co.,

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		Inc. Responses due by 2/12/2010 (Attachments: # <u>1</u> Affidavit of Lynne Burnett dated 1/16/2010 in support of motion, # <u>2</u> Certificate of Service dated 1/22/2010)(Scharlat, Richard) (Entered: 01/22/2010)
01/22/2010	<u>21</u>	Memorandum in Support re <u>20</u> MOTION to Dismiss dated 1/22/2010 <i>Count Eight and Lynne Burnett from the amended complaint dated 1/22/2010 and in opposition to plaintiff's motion to remand to state court and for joinder</i> filed by Gillette Co, LYNNE BURNETT, Proctor & Gamble Co., Inc, Proctor & Gamble Co. (Scharlat, Richard) (Entered: 01/22/2010)
02/12/2010	<u>22</u>	OBJECTION re <u>20</u> MOTION to Dismiss dated 1/22/2010 <i>Count Eight and Lynne Burnett from the amended complaint</i> filed by Predrag Cicvara. (Attachments: # <u>1</u> Memorandum in Support OBJECTION TO MOTION TO DISMISS)(Skiber, Michael) (Entered: 02/12/2010)
02/12/2010	<u>23</u>	RESPONSE re <u>18</u> Answer to Amended Complaint <i>REPLY TO SPECIAL DEFENSES</i> by Predrag Cicvara. (Attachments: # <u>1</u> Affidavit CERTIFICATION OF SERVICE)(Skiber, Michael) (Entered: 02/12/2010)
02/12/2010	<u>24</u>	CERTIFICATE OF SERVICE by Predrag Cicvara <i>OBJECTION TO MOTION TO DISMISS</i> (Skiber, Michael) (Entered: 02/12/2010)
02/12/2010	<u>25</u>	Memorandum in Opposition re <u>20</u> MOTION to Dismiss dated 1/22/2010 <i>Count Eight and Lynne Burnett from the amended complaint</i> filed by Predrag Cicvara. (Skiber, Michael) (Entered: 02/12/2010)
02/25/2010	<u>26</u>	REPLY to Response to <u>20</u> MOTION to Dismiss dated 1/22/2010 <i>Count Eight and Lynne Burnett from the amended complaint</i> filed by LYNNE BURNETT. (Attachments: # <u>1</u> Certificate of Service)(Cerasia, Edward) (Entered: 02/25/2010)
03/08/2010	<u>27</u>	NOTICE TO COUNSEL/PRO SE PARTIES, (Rule 26 Meeting Report due by 3/29/2010). Signed by Clerk on 3/8/10. (Gutierrez, Y.) (Entered: 03/10/2010)
03/19/2010	<u>28</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Telephone Conference set for 3/24/2010 02:00 PM in Chambers Room 417, 915 Lafayette Blvd., Bridgeport, CT before Judge Janet C. Hall. Counsel are requested to participate in this conference via telephone. This conference call is to be arranged between counsel. Once all parties are on the line, please telephone chambers at (203) 579-5554 (Volek, J.) (Entered: 03/19/2010)
03/22/2010	<u>29</u>	First MOTION to Withdraw <u>15</u> First MOTION to Remand to State Court <i>AND 17 Motion for Joinder of Party Lynne Burnett</i> by Predrag Cicvara. (Attachments: # <u>1</u> Affidavit Certificate of Service)(Skiber, Michael) Modified on 3/23/2010 TO CREATE DOCKET ENTRY RELATIONSHIP TO DOC #17 (Simpson, T.). (Entered: 03/22/2010)
03/24/2010	<u>30</u>	Joint REPORT of Rule 26(f) Planning Meeting. (Attachments: # <u>1</u> Joint Statement Pursuant to Clerks Order Dated March 8, 2010)(Cerasia, Edward) (Entered: 03/24/2010)
03/24/2010	<u>31</u>	Minute Entry. Telephone Conference held before Judge Janet C. Hall on 3/24/2010: granting as of right <u>13</u> Motion to Amend/Correct; granting <u>29</u> Motion to Withdraw; withdrawing <u>15</u> Motion to Remand to State Court; withdrawing <u>17</u> Motion for Joinder, for the reasons stated on the record. 15 minutes (Court Reporter T. Fidanza.) (Volek, J.) (Entered: 03/24/2010)
03/31/2010	<u>32</u>	SCHEDULING ORDER re: <u>30</u> Joint REPORT of Rule 26(f) Planning Meeting. Discovery due by 8/1/2010 Dispositive Motions due by 9/1/2010 Status Report due by 6/30/2010 Trial Brief due by 9/1/2010. Signed by Judge Janet C. Hall on 3/31/2010. (Simpson, T.) (Entered: 03/31/2010)
05/20/2010	<u>33</u>	MOTION for Leave to Appear Pro Hac Vice Attorney Hema Chatlani. Filing Fee \$25.00. Receipt Number B019726. by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc. (Simpson, T.) Modified on 5/21/2010 (Villano, P.). (Entered: 05/20/2010)

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05/20/2010	<u>34</u>	ORDER granting <u>33</u> Motion for Attorney Hema Chatlani to Appear Pro Hac Vice. Signed by Clerk on 5/20/2010. (Simpson, T.) Modified on 5/21/2010 (Villano, P.). Modified on 5/21/2010 (Villano, P.). (Entered: 05/20/2010)
05/21/2010	<u>35</u>	Docket Entry Correction re <u>33</u> MOTION for Leave to Appear Pro Hac Vice Attorney Hema Chatlani. Filing Fee \$25.00. Receipt Number B019726., <u>34</u> Order on Motion to Appear. Corrected attorney's name that is appearing pro hac vice (Villano, P.) (Entered: 05/21/2010)
06/01/2010	<u>36</u>	PROPOSED ORDER GOVERNING THE TREATMENT OF CONFIDENTIAL MATERIAL, filed by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Text of Proposed Order)(Cerasia, Edward) (Entered: 06/01/2010)
06/09/2010	<u>37</u>	NOTICE of Appearance by Hema Chatlani on behalf of LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc (Chatlani, Hema) (Entered: 06/09/2010)
06/14/2010	<u>38</u>	MOTION for Extension of Time until July 15, 2010 Rule 26(a)(2)(B) Disclosures <u>32</u> Scheduling Order, by Predrag Cicvara. (Skiber, Michael) (Entered: 06/14/2010)
06/16/2010	<u>39</u>	MOTION to Compel <i>Production of Documents</i> by Predrag Cicvara. Responses due by 7/7/2010 (Attachments: # <u>1</u> Affidavit Certification of Service, # <u>2</u> Exhibit Notice of Manual Filing)(Skiber, Michael) (Entered: 06/16/2010)
06/17/2010	<u>40</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Hearing as to <u>39</u> MOTION to Compel Production of Documents set for 6/29/2010 10:30 AM in Courtroom Two, 915 Lafayette Blvd., Bridgeport, CT before Judge Janet C. Hall. (Volek, J.) (Entered: 06/17/2010)
06/22/2010	<u>41</u>	Consent MOTION to Continue, filed by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 06/22/2010)
06/23/2010	<u>42</u>	ORDER granting <u>41</u> Motion to Continue. A rescheduled calendar will issue. SO ORDERED by Judge Janet C. Hall on 6/23/10. (Volek, J.) (Entered: 06/23/2010)
06/25/2010	<u>43</u>	NOTICE OF rescheduled E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Hearing as to <u>39</u> MOTION to Compel Production of Documents previously set for 6/29/2010 10:30 AM has been RESCHEDULED for 7/20/2010 03:30 PM in Courtroom Two, 915 Lafayette Blvd., Bridgeport, CT before Judge Janet C. Hall. (Volek, J.) (Entered: 06/25/2010)
06/30/2010	<u>44</u>	Joint STATUS REPORT of COUNSEL, submitted in accordance with Judge Janet C. Hall's 3/31/10 SCHEDULING ORDER REGARDING CASE MANAGEMENT PLAN [Docket Entry No. 32], filed by LYNNE BURNETT, Predrag Cicvara, Gillette Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 06/30/2010)
07/07/2010	<u>45</u>	Memorandum in Opposition re <u>39</u> MOTION to Compel <i>Production of Documents</i> filed by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Certificate of Service)(Cerasia, Edward) (Entered: 07/07/2010)
07/13/2010	<u>46</u>	Sealed Document: Exhibits A- E to the Motion to Compel Discovery and Supporting Memorandum by Predrag Cicvara re <u>39</u> MOTION to Compel <i>Production of Documents</i> . (Simpson, T.) (Entered: 07/13/2010)
07/22/2010	<u>47</u>	Minute Entry. Proceedings held before Judge Janet C. Hall: Hearing held on 7/20/10, granting <u>38</u> Motion for Extension of Time nunc pro tunc; denying without prejudice to renew <u>39</u> Motion to Compel, and taking under advisement remaining request; granting <u>20</u> Motion to Dismiss, all as stated on the record. The plaintiff is granted leave to file a Second Amended Complaint. Total Time: 1 hours and 20 minutes. (Court Reporter T. Fidanza.) (Volek, J.) Modified on 7/29/2010 to correct motion relief(DeRubeis, B.). (Main Document 47 replaced on 7/29/2010) (DeRubeis, B.). (Entered: 07/22/2010)

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07/27/2010	<u>48</u>	Joint MOTION for Extension of Time re: <i>Docket Entry #32</i> Scheduling Order, by LYNNE BURNETT, Predrag Cicvara, Gillette Co, Proctor & Gamble Co., Inc, Duracell. (Cerasia, Edward) Modified on 7/28/2010 (Simpson, T.). (Entered: 07/27/2010)
07/28/2010		Docket Entry Correction re <u>48</u> Joint MOTION for Extension of Time MODIFIED TO ADD DEFENDANT DURACELL AS A FILER TO THE DOCKET ENTRY (Simpson, T.) (Entered: 07/28/2010)
07/29/2010	<u>49</u>	Docket Entry Correction: Minute Entry corrected to reflect motion relief. Proceedings held before Judge Janet C. Hall: Hearing held on 7/20/10, granting <u>38</u> Motion for Extension of Time nunc pro tunc; denying without prejudice to renew <u>39</u> Motion to Compel, and taking under advisement remaining request; granting <u>20</u> Motion to Dismiss, all as stated on the record. The plaintiff is granted leave to file a Second Amended Complaint. Total Time: 1 hours and 20 minutes. (Court Reporter T. Fidanza.) (Volek, J.) Modified on 7/29/2010 to correct motion relief (DeRubeis, B.). (Main Document 47 replaced on 7/29/2010) (DeRubeis, B.) (Entered: 07/29/2010)
07/29/2010	<u>50</u>	ORDER granting <u>48</u> Joint MOTION for Extension of Time re: Docket Entry # 32 Scheduling Order, by LYNNE BURNETT, Predrag Cicvara, Gillette Co, Proctor & Gamble Co., Inc, Duracell. The court notes that it does not recall suggesting plaintiff "file additional document requests." He is not barred from doing so, but he and the defendant should be mindful that the court does not expect to extend these deadlines. SO ORDERED by Judge Janet C. Hall on 7/29/2010. (DeRubeis, B.) (Entered: 07/29/2010)
07/29/2010		Set Deadlines/Hearings: Discovery due by 12/15/2010 Dispositive Motions due by 1/17/2011 Trial Brief due by 1/17/2011 (DeRubeis, B.) (Entered: 07/29/2010)
08/19/2010	<u>51</u>	NOTICE by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc (Attachments: # <u>1</u> Exhibit A to Defendants' Letter Notice, # <u>2</u> Exhibit B to Defendants' Letter Notice, # <u>3</u> Exhibit C to Defendants' Letter Notice, # <u>4</u> Exhibit D to Defendants' Letter Notice)(Cerasia, Edward) (Entered: 08/19/2010)
09/02/2010	<u>52</u>	NOTICE: If any discovery issues from the motions addressed on the record on 07/20/10 (Doc. nos. 47 & 49) remain pending after the filing of Defendants' Notice (Doc. no. 51), Plaintiff is directed to file a pleading raising those issues. Otherwise the court will assume those issues have been resolved. SO ORDERED by Judge Janet C. Hall on 09/02/10. (Hobbs, J.) (Entered: 09/02/2010)
09/28/2010	<u>53</u>	MOTION for Michael E. Skiber to Withdraw as Attorney by Predrag Cicvara. (Attachments: # <u>1</u> Affidavit Certification of Service)(Skiber, Michael) (Entered: 09/28/2010)
09/28/2010	<u>54</u>	Second STATUS REPORT of COUNSEL, submitted (jointly) in accordance with Judge Janet C. Hall's 3/31/10 SCHEDULING ORDER REGARDING CASE MANAGEMENT PLAN [Docket Entry No. 32], filed by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc, Predrag Cicvara . (Cerasia, Edward) Modified on 9/29/2010 (Simpson, T.). (Entered: 09/28/2010)
09/29/2010		Docket Entry Correction re <u>54</u> Status Report MODIFIED TO ADD PLAINTIFF AS A FILER TO THE DOCKET ENTRY (Simpson, T.) (Entered: 09/29/2010)
09/30/2010	<u>56</u>	NOTICE to PLAINTIFF re <u>53</u> MOTION for Michael E. Skiber to Withdraw as Attorney. Reset Deadlines as to <u>53</u> MOTION for Michael E. Skiber to Withdraw as Attorney.(Responses due by 10/21/2010,). Signed by Judge Janet C. Hall on 9/30/2010. (Simpson, T.) (Entered: 10/05/2010)
10/04/2010	<u>55</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Hearing on <u>53</u> Motion to Withdraw set for 10/27/2010 10:30 AM in Courtroom Two, 915 Lafayette Blvd., Bridgeport, CT before Judge Janet C. Hall (Hobbs, J.) (Entered: 10/04/2010)
10/26/2010	<u>57</u>	NOTICE of Appearance by Igor I. Sikorsky, Jr on behalf of Predrag Cicvara <i>Lead Counsel</i> (Sikorsky, Igor) (Entered: 10/26/2010)

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10/27/2010	58	NOTICE re 55 Calendar Entry. The hearing on Attorney Skiber's Motion to Withdraw is canceled in light of the Notice of Appearance filed by Attorney Sikorsky. So ordered by Judge Janet C. Hall on 10/27/10. (Hobbs, J.) (Entered: 10/27/2010)
11/05/2010	59	ORDER granting <u>53</u> Motion to Withdraw as Attorney. Attorney Michael E. Skiber terminated. SO ORDERED by Judge Janet C. Hall on 11/5/2010. (DeRubeis, B.) (Entered: 11/05/2010)
12/10/2010	<u>60</u>	MOTION for Extension of Time, filed by LYNNE BURNETT, Gillette Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 12/10/2010)
12/10/2010	<u>61</u>	First MOTION for Extension of Time until March 10, 2010 <i>For Present Counsel of Plaintiff</i> Plaintiff to Conclude Discovery by Predrag Cicvara. (Sikorsky, Igor) (Entered: 12/10/2010)
12/13/2010	62	ORDER granting <u>60</u> Motion for Extension of Time; granting in part <u>61</u> First MOTION for Extension of Time for Present Counsel of Plaintiff to Conclude Discovery by Predrag Cicvara. Discovery is to be completed by February 15, 2011 and dispositive motions by March 15, 2011. SO ORDERED by Judge Janet C. Hall on 12/13/2010. (DeRubeis, B.) (Entered: 12/13/2010)
12/13/2010		Set Deadlines/Hearings: Discovery due by 2/15/2011 Dispositive Motions due by 3/15/2011 (DeRubeis, B.) (Entered: 12/13/2010)
12/27/2010	<u>63</u>	Third STATUS REPORT filed by LYNNE BURNETT, Predrag Cicvara, Gillette Co, Proctor & Gamble Co, Proctor & Gamble Co., Inc. (Chatlani, Hema) (Entered: 12/27/2010)
02/14/2011	<u>64</u>	Second MOTION for Extension of Time until 03/20/2011 <i>of Discovery Time</i> Discovery by Predrag Cicvara. (Sikorsky, Igor) (Entered: 02/14/2011)
02/15/2011	65	ORDER granting in part to 3/1/2011 <u>64</u> Second MOTION for Extension of Time for Discovery Time by Predrag Cicvara. SO ORDERED by Judge Janet C. Hall on 2/15/2011. (DeRubeis, B.) (Entered: 02/15/2011)
02/15/2011		Set Deadlines/Hearings: Discovery due by 3/1/2011 (DeRubeis, B.) (Entered: 02/15/2011)
02/23/2011	<u>66</u>	LETTER MOTION for Extension of Time by Gillette Co, Proctor & Gamble Co., Inc. (DeRubeis, B.) (Entered: 02/23/2011)
02/23/2011	67	ORDER granting <u>66</u> Letter Motion for Extension of Time. The court, treating this as a Motion to Extend the dispositive motion deadline, grants the motion to 4/1/2011. SO ORDERED by Judge Janet C. Hall on 2/23/2011. (DeRubeis, B.) (Entered: 02/23/2011)
02/23/2011		Set Deadlines/Hearings: Dispositive Motions due by 4/1/2011 (DeRubeis, B.) (Entered: 02/23/2011)
02/25/2011	<u>68</u>	First MOTION to Compel <i>Production of Documents</i> by Predrag Cicvara. Responses due by 3/18/2011 (Sikorsky, Igor) (Entered: 02/25/2011)
03/10/2011	<u>69</u>	Memorandum in Opposition re <u>68</u> First MOTION to Compel <i>Production of Documents</i> filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 03/10/2011)
03/17/2011	<u>70</u>	MOTION for Extension of Time until April 15, 2011 To File A Dispositive Motion by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 03/17/2011)
03/21/2011	71	ORDER granting <u>70</u> MOTION for Extension of Time until April 15, 2011 To File A Dispositive Motion by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co, Proctor & Gamble Co., Inc. SO ORDERED by Judge Janet C. Hall on 3/21/2011. (DeRubeis, B.) (Entered: 03/21/2011)
03/21/2011		Set Deadlines/Hearings: Dispositive Motions due by 4/15/2011 (DeRubeis, B.) (Entered: 03/21/2011)

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03/28/2011	<u>72</u>	NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Telephone Conference re <u>68</u> Motion to Compel set for 4/6/2011 12:00 PM in Chambers Room 417, 915 Lafayette Blvd., Bridgeport, CT before Judge Janet C. Hall. Counsel are requested to participate in this conference via telephone. This conference call is to be arranged between counsel. Once all parties are on the line, please telephone chambers at (203) 579-5554. (Hobbs, J.) (Entered: 03/28/2011)
04/06/2011	<u>73</u>	Minute Entry. Proceedings held before Judge Janet C. Hall: Motion Hearing re <u>68</u> First MOTION to Compel held on 4/6/2011. Ruling on the record denying <u>68</u> Motion to Compel. Defendant will provide additional disclosure as directed on the record. Total Time: 15 minutes(Court Reporter T. Fidanza) (Hobbs, J.) (Entered: 04/06/2011)
04/15/2011	<u>74</u>	MOTION for Summary Judgment by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. Responses due by 5/6/2011 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Material Facts, # <u>3</u> Proof of Service)(Cerasia, Edward) (Entered: 04/15/2011)
04/15/2011	<u>75</u>	AFFIDAVIT re <u>74</u> MOTION for Summary Judgment Signed By Edward Cerasia II filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, Part 1 of 2, # <u>3</u> Exhibit B, Part 2 of 2, # <u>4</u> Exhibit C-D)(Cerasia, Edward) (Entered: 04/15/2011)
04/15/2011	<u>76</u>	AFFIDAVIT re <u>74</u> MOTION for Summary Judgment Signed By Dina Schmude filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Exhibit A-C)(Cerasia, Edward) (Entered: 04/15/2011)
04/15/2011	<u>77</u>	AFFIDAVIT re <u>74</u> MOTION for Summary Judgment Signed By Peggy Wilczewski filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Exhibit A-J)(Cerasia, Edward) (Entered: 04/15/2011)
04/15/2011	<u>78</u>	AFFIDAVIT re <u>74</u> MOTION for Summary Judgment Signed By Lynne Burnett filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Exhibit A-B)(Cerasia, Edward) (Entered: 04/15/2011)
04/15/2011	<u>79</u>	AFFIDAVIT re <u>74</u> MOTION for Summary Judgment Signed By Kevin Babis filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Exhibit A-B)(Cerasia, Edward) (Entered: 04/15/2011)
05/03/2011	<u>80</u>	First MOTION for Extension of Time to File Response/Reply as to <u>74</u> MOTION for Summary Judgment until 05/27/2011 by Predrag Cicvara. (Sikorsky, Igor) (Entered: 05/03/2011)
05/04/2011	<u>81</u>	ORDER granting <u>80</u> Motion for Extension of Time to File Response/Reply re <u>74</u> MOTION for Summary Judgment. Responses due by 5/27/2011. SO ORDERED by Judge Janet C. Hall on 5/4/2011. (DeRubeis, B.) (Entered: 05/04/2011)
05/26/2011	<u>82</u>	First MOTION for Leave to File Excess Pages by Predrag Cicvara. (Sikorsky, Igor) (Entered: 05/26/2011)
05/26/2011	<u>83</u>	First Statement of Material Facts re <u>74</u> MOTION for Summary Judgment <i>Material Facts In Dispute</i> filed by Predrag Cicvara. (Attachments: # <u>1</u> Exhibit Email June 29, 2009, # <u>2</u> Exhibit PGConduct Manual, # <u>3</u> Exhibit 1971 SOP plan 10 2004, # <u>4</u> Exhibit Letter to HK JULY 20, 2009, # <u>5</u> Exhibit Complete Depo Dec. 21, 2010, # <u>6</u> Exhibit Complete Deposition Dec. 21, 2010, # <u>7</u> Exhibit Motion for Production Jan. 3, 2011, # <u>8</u> Exhibit Defendant's Responses and Objections Feb. 7, 2011, # <u>9</u> Exhibit Blackberry Bill June 2009, # <u>10</u> Exhibit Explanation Table, # <u>11</u> Exhibit Sixth Text Message Bel Liu, # <u>12</u> Exhibit Def. Mem. of Law Opp. Plaintiff July 7, 2010, # <u>13</u> Exhibit Email June 25, 2009, # <u>14</u> Exhibit Stock Options Letter June 16, 2009)(Sikorsky, Igor) (Entered: 05/26/2011)
05/26/2011	<u>84</u>	First Memorandum in Opposition To Gillette's re <u>74</u> MOTION for Summary Judgment filed by Predrag Cicvara. (Sikorsky, Igor) (Entered: 05/26/2011)
05/26/2011	<u>85</u>	First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment</i> by Predrag Cicvara. Responses due by 6/16/2011 (Sikorsky, Igor) (Entered: 05/26/2011)

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05/26/2011	<u>86</u>	First Memorandum in Support re <u>85</u> First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment Memorandum In Support of Cicvara's Cross Motion For Summary Judgment</i> filed by Predrag Cicvara. (Sikorsky, Igor) (Entered: 05/26/2011)
05/26/2011	<u>87</u>	First Statement of Material Facts re <u>85</u> First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment</i> , <u>74</u> MOTION for Summary Judgment <i>Plaintiff's Statement Of Undisputed Material Facts Pursuant To Local Rule 56.1(A)(1)</i> filed by Predrag Cicvara. (Sikorsky, Igor) (Entered: 05/26/2011)
05/27/2011	<u>88</u>	ENTERED IN ERROR – First EXHIBIT <i>Affidavit Of Predrag Cicvara May 25, 2011</i> by Predrag Cicvara re <u>84</u> Memorandum in Opposition to Motion, <u>85</u> First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment</i> , <u>74</u> MOTION for Summary Judgment. (Attachments: # <u>1</u> Exhibit Stock Options Letter June 16, 2009, # <u>2</u> Exhibit Notice Salary Increase June 1, 2009, # <u>3</u> Exhibit Email Andrew Yau June 25, 2009, # <u>4</u> Exhibit Facts In Chronological Order 12-21-2007, # <u>5</u> Exhibit First Part More... 2-11-2008, # <u>6</u> Exhibit Email Rob DaPra Jan. 4, 2008, # <u>7</u> Exhibit Blackberry Bill June 2009, # <u>8</u> Exhibit Exact Explanation Table, # <u>9</u> Exhibit Sixth Text Message Bel Liu, # <u>10</u> Exhibit Email Austin Lin June 9, 2009, # <u>11</u> Exhibit Letter To Duracell Lawyer July 9, 2009, # <u>12</u> Exhibit PGBusiness Conduct Manual, # <u>13</u> Exhibit 1971 SOP Plan 10 2004 Gillette Stock Plan, # <u>14</u> Exhibit Letter To IIK July 20, 2009, # <u>15</u> Exhibit Complete Deposition Cicvara Dec. 21, 2010, # <u>16</u> Exhibit Email Cicvara Wilczewski June 29 2009, # <u>17</u> Exhibit Hand Written Notes Wilcz After June 30 2009)(Sikorsky, Igor) Modified on 5/31/2011 (Simpson, T.). (Entered: 05/27/2011)
05/31/2011	<u>89</u>	First AFFIDAVIT re <u>84</u> Memorandum in Opposition to Motion, <u>85</u> First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment</i> , <u>74</u> MOTION for Summary Judgment <i>dated May 25, 2011</i> Signed By Predrag Cicvara filed by Predrag Cicvara. (Attachments: # <u>1</u> Exhibit Stocks Options Letter Peggy Wilcz June 16, 2009, # <u>2</u> Exhibit Notice Salary Increase June 1, 2009, # <u>3</u> Exhibit Email Andrew Yau To Lawson June 25, 2009, # <u>4</u> Exhibit FACTS PUT IN A CHRONOLOGICAL ORDER Orig. Date 12-21-2007, # <u>5</u> Exhibit FIRST PART more and the part of second Orig. Date 2 11 2008, # <u>6</u> Exhibit Email Rob DaPra Jan. 4, 2008, # <u>7</u> Exhibit Blackberry Bill June 2009, # <u>8</u> Exhibit EXACT EXPLANATION TABLE, # <u>9</u> Exhibit Page 00612 Sixth Text Message Bel Liu, # <u>10</u> Exhibit Email Austin Lin Reporting June 9, 2009, # <u>11</u> Exhibit Letter To Duracell Lawyer Skiber July, 9 2009, # <u>12</u> Exhibit PGBusiness Conduct Manual Manual WBCM REDUCED Single Page, # <u>13</u> Exhibit 1971 SOP plan 10 2004 Gillette Stock Plan, # <u>14</u> Exhibit Letter to HK 10 minutes on Monday Orig. File July, 20 2009, # <u>15</u> Exhibit Complete Deposition Cicvara Dec. 21, 2010, # <u>16</u> Exhibit Email Cicvara Wilczewski June 29, 2009, # <u>17</u> Exhibit Hand Written Notes Wilcz After June 30, 2009)(Sikorsky, Igor) (Entered: 05/31/2011)
06/01/2011	<u>90</u>	First MOTION for Extension of Time to File Response/Reply as to <u>74</u> MOTION for Summary Judgment until June 17, 2011 by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 06/01/2011)
06/02/2011	<u>91</u>	ORDER granting <u>90</u> Motion for Extension of Time to File Response/Reply re <u>74</u> MOTION for Summary Judgment. Reply due by 6/17/2011. SO ORDERED by Judge Janet C. Hall on 6/2/2011. (DeRubeis, B.) (Entered: 06/02/2011)
06/04/2011	<u>92</u>	First CERTIFICATE OF SERVICE by Predrag Cicvara re <u>89</u> Affidavit,,,,, to provide a certificate of service for document <u>82</u> (Sikorsky, Igor) (Entered: 06/04/2011)
06/06/2011	<u>93</u>	ORDER denying <u>82</u> Motion for Leave to File Excess Pages. There is no limit on exhibit pages. As best as the court can determine, plaintiff's memorandum does not exceed the page limit. SO ORDERED by Judge Janet C. Hall on 6/6/2011. (DeRubeis, B.) (Entered: 06/06/2011)
06/16/2011	<u>94</u>	REPLY to Response to <u>74</u> MOTION for Summary Judgment filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Proof of Service)(Cerasia, Edward) (Entered: 06/16/2011)

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06/16/2011	<u>95</u>	Memorandum in Opposition re <u>85</u> First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment</i> filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Attachments: # <u>1</u> Proof of Service)(Cerasia, Edward) (Entered: 06/16/2011)
06/16/2011	<u>96</u>	Statement of Material Facts re <u>85</u> First MOTION for Summary Judgment <i>Notice of Cross Motion For Summary Judgment Defendants' Local Rule 56(a)2 Statement</i> filed by LYNNE BURNETT, Duracell, Gillette Co, Proctor & Gamble Co., Inc. (Cerasia, Edward) (Entered: 06/16/2011)
11/22/2011	<u>97</u>	RULING granting <u>74</u> Motion for Summary Judgment; denying <u>85</u> Motion for Summary Judgment. Signed by Judge Janet C. Hall on 11/22/2011. (Oliver, T.) (Entered: 11/22/2011)
11/30/2011	<u>98</u>	JUDGMENT entered in favor of Duracell, Gillette Co, Proctor & Gamble Co., Inc against Predrag Cicvara. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms.html . Signed by Clerk on 11/29/2011. (Oliver, T.) (Entered: 11/30/2011)
11/30/2011		JUDICIAL PROCEEDINGS SURVEY: The following link to the confidential survey requires you to log into CM/ECF for SECURITY purposes. Once in CM/ECF you will be prompted for the case number. Although you are receiving this survey through CM/ECF, it is hosted on an independent website called SurveyMonkey. Once in SurveyMonkey, the survey is located in a secure account. The survey is not docketed and it is not sent directly to the judge. To ensure anonymity, completed surveys are held up to 90 days before they are sent to the judge for review. We hope you will take this opportunity to participate, please click on this link: https://ccf.ctd.uscourts.gov/cgi-bin/Dispatch.pl?survey (Oliver, T.) (Entered: 11/30/2011)
12/21/2011	<u>99</u>	First MOTION for Extension of Time until 01/25/2012 <i>For Plaintiff, Predrag Cicvara To Perfect An Appeal</i> <u>98</u> Judgment, <u>97</u> Order on Motion for Summary Judgment, by Predrag Cicvara. (Sikorsky, Igor) (Entered: 12/21/2011)
12/22/2011	100	ORDER granting <u>99</u> Motion for Extension of Time for good cause shown. SO ORDERED by Judge Janet C. Hall on 12/22/2011. (Lienke, J) (Entered: 12/22/2011)
01/19/2012	<u>101</u>	NOTICE OF APPEAL as to <u>98</u> Judgment by Predrag Cicvara. Filing fee \$ 455, receipt number CTXB00001587. (Oliver, T.) (Entered: 01/19/2012)

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**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: January 26, 2012
Docket #: 12-338cv
Short Title: Cicvara v. Gillette Co et al

DC Docket #: 09-cv-2054
DC Court: CT (NEW HAVEN)
DC Judge: Hall

DOCKETING NOTICE

A notice of appeal filed by Appellant Cicvara in the above referenced case was docketed today as 12-338. This number must appear on all documents related to this case that are filed in this Court. For pro se parties the docket sheet with the caption page, and an Acknowledgment and Notice of Appearance Form are enclosed. In counseled cases the docket sheet is available on PACER. Counsel must access the Acknowledgment and Notice of Appearance Form from this Court's website <http://www.ca2.uscourts.gov>.

The form must be completed and returned within 14 days of the date of this notice. The form requires the following information:

YOUR CORRECT CONTACT INFORMATION: Review the party information on the docket sheet and note any incorrect information in writing on the Acknowledgment and Notice of Appearance Form.

The Court will contact one counsel per party or group of collectively represented parties when serving notice or issuing our order. Counsel must designate on the Acknowledgment and Notice of Appearance a lead attorney to accept all notices from this Court who, in turn will, be responsible for notifying any associated counsel.

CAPTION: This Court must use the district court caption See FRAP 12(a), 32(a). Please review the caption carefully and promptly advise this Court of any improper or inaccurate designations in writing on the Acknowledgment and Notice of Appearance form. If a party has been terminated from the case the caption may reflect that change only if the district court judge ordered that the caption be amended.

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APPELLATE DESIGNATIONS: Please review whether appellant is listed correctly on the party listing page of the docket sheet and in the caption. If there is an error, please note on the Acknowledgment and Notice of Appearance Form. Timely submission of the Acknowledgment and Notice of Appearance Form will constitute compliance with the requirement to file a Representation Statement required by FRAP 12(b).

For additional information consult the Court's instructions posted on the website.

Inquiries regarding this case may be directed to 212-857-8551.